

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 211

DELBERT O. STARK, A. F. STRATTON, A. R.
DENTON, G. STEBBINS AND F. WALSH, PETI-
TIONERS,

vs.

CLAUDE R. WICKARD, SECRETARY OF AGRI-
CULTURE OF THE UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA

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PERTINENT DOCKET ENTRIES IN DISTRICT COURT

Date

1941 Sept. 22 Complaint.
 " 22 Summons & copy (1) of complt. issued.
 Served 9/25/41.
 Nov. 25 Motion of Deft. for summary judgment.
 1942 Feb. 11 Motion for summary judgment heard and
 submitted by O'Donoghue, J.
 12 Order overruling motion for summary
 judgment. W.P. 30 days to answer.
 O'Donoghue, J.
 Mch. 7 Answer of Deft. to complt.
 May 12 Motion for dismissal of first defense.
 " 27 Final judgt. dismissing cause. / Adkins,
 J. (n).
 June 22 Notice of appeal by Plff. (copy of Notice
 of Appeal mailed by Clerk to John Yost,
 Dept. of Justice) filed.

**COMPLAINT TO RESTRAIN CERTIFICATION FOR
PAYMENTS**

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA.

Civil Action, File Number 12944.

**DELBERT O. STARK,
A. F. STRATTON,
A. R. DENTON,
G. STEBBINS,
F. WALSH,**

v.

**CLAUDE R. WICKARD, Secretary of Agri-
culture of the United States.**

[1]

1. The plaintiffs herein are citizens of the States of New York, Maine, New Hampshire and Vermont, residing in the respective places stated after their names at the end hereof. The plaintiffs bring this bill for themselves and for the benefit of all other persons similarly situated.

2. The defendant is Claude R. Wickard, the Secretary of Agriculture of the United States, whose official residence is in Washington, D. C.

3. Each of the plaintiffs produces milk and sells the same to "handlers", who resell and distribute such milk in the Greater Boston, Massachusetts, marketing area as defined by Order No. 4, as amended, issued by the defendant, the Secretary of Agriculture under the agricultural Marketing Agreement Act of 1937, 50 Stat. 246, U. S. C. Title 7, §601, et seq., which amends and reenacts certain provisions of the Agricultural Adjustment Act of 1933,

48 Stat. 31, as amended 49 Stat. 750, as hereinafter more fully appears, and each of the plaintiffs is a "producer" as defined in said Order No. 4 as amended.

4. Said Order No. 4 was amended by the defendant on July 29, 1941, effective August 1, 1941, and is presently effective as so amended. 6 Federal Register 3762. Said Order No. 4 regulates the handling of milk sold in the Greater Boston, Massachusetts, marketing area; and to that end fixes minimum prices which shall be paid by all handlers for such milk, the value thereof being determined in accordance with the use of such milk by the handlers to whom it is sold; and provides for the equalization of such payments by handlers so that, subject only to certain adjustments set forth in said Order, all producers shall receive a uniform blended price per hundredweight for such milk, irrespective of the use to which it may be put by the handlers to whom it is sold. A true copy of said Order No. 4 is attached hereto, marked "Exhibit A".

5. Section 904.9 of said Order No. 4 requires the Market Administrator (who is the agent appointed and removable by the defendant) to make certain payments on the 25th day of each calendar month to cooperative associations of producers which the defendant Secretary of Agriculture has determined to be qualified therefor in accordance with the terms of said Section. Said payments, consisting of $1\frac{1}{2}$ cents per hundredweight of milk marketed by any such cooperative association on behalf of its members and of 5 cents per hundredweight of Class I milk received from producers at a plant operated under the exclusive control of member producers and sold to proprietary handlers, purport to be payable in the manner and subject to the limitations more specifically set forth in Exhibit A hereto, to which reference is hereby made. None of the plaintiffs is a member of a cooperative association which is or may be eligible for such payments, and because of the foregoing provisions of Section 904.9, many of the plaintiffs voted

against the adoption of said amendment to Order No. 4 promulgated on July 29, 1941, at the time said amendment was submitted to a producers' referendum pursuant to Section 8c(9) of the Agricultural Marketing Agreement Act of 1937 (U. S. C. Title 7, §608c(9)).

6. Said Order No. 4 required such payments to co-operative associations from funds paid pursuant to Section 904.8(b)(3) of said Order No. 4, by handlers the value of whose milk during the preceding month, as determined in accordance with the minimum prices fixed by Section 904.4, exceeds their payments to producers therefor, as determined in accordance with the uniform blended price computed and announced pursuant to Section 904.7.

7. The plaintiffs, together with all other producers whose milk is marketed pursuant to said Order No. 4, are paid the blended price as computed and announced by the Market Administrator pursuant to Section 904.7. Said blended price is computed by dividing the value of all milk purchased by handlers during the preceding month, as determined on the basis of the minimum prices fixed by Section 904.4 according to the uses made of such milk, by the total volume of milk so included. Notwithstanding lack of authority therefor, as hereinafter more fully appears, subparagraph (b)(5) of said Section 904.7 further provides that there shall be deducted from the value of such milk the amount of the payments required to be made to co-operative associations pursuant to Section 904.9—all as more specifically set forth in Exhibit A hereto, to which reference is hereby made. As a result of said unauthorized and illegal deduction the blended price announced by the Market Administrator is less than the average value of the milk marketed pursuant to said Order No. 4 by the plaintiffs and other producers serving the Greater Boston marketing area.

8. On information and belief, the Market Administrator has sent to each cooperative association operating in the Greater Boston marketing area a form of application to the defendant for qualification as a cooperative association to receive the payments specified in said Section 904.9, accompanied by a questionnaire to be returned therewith setting forth information relative to the requirements of said Section. On information and belief, the foregoing action of the Market Administrator was taken on behalf of the defendant Secretary of Agriculture, and numerous applications, together with accompanying questionnaires, have been submitted to the defendant by cooperative associations seeking to be determined as eligible for the payments specified in said Section 904.9.

9. On September 12, 1941, the Market Administrator announced the blended price applicable to milk delivered to handlers during August, 1941, by the plaintiffs and other producers serving the Greater Boston marketing area, and made public the computations thereof and certain further information as required by Section 904.7 of said Order No. 4. A true copy of said announcement, marked "Exhibit B," is attached hereto. Said announcement discloses that the sum of \$15,575.31 was deducted pursuant to Section 904.7(b)(5) for payments to cooperative associations to be certified by the defendant Secretary of Agriculture as above with respect to deliveries made during August, 1941.

10. The plaintiffs are informed and believe that the defendant Secretary of Agriculture is about to determine, or has already determined, pursuant to Section 904.9 that certain cooperatives are qualified and entitled to receive the payments specified by said Section 904.9; whereupon such payments will be made on or before September 25, 1941, with respect to milk delivered in the month of August, 1941.

11. Upon the qualification of any cooperative association by the defendant Secretary of Agriculture on or before September 25, 1941, immediate payment is to be made to such cooperative from the funds set aside for that purpose in the computation of the blended price for August, 1941, from the total milk payments by handlers for milk delivered to them, which funds will be received by the Market Administrator on September 23, 1941, pursuant to Section 904.8(b)(3) of said Order No. 4. Further, upon the qualification of any cooperative, similar payments will be made in all succeeding months and similar deductions will be made in computing the blended price payable to the plaintiffs in all succeeding months.

12. As shown by the Market Administrator's announcement attached hereto as Exhibit B, the deduction of \$15,575.31 made by the Market Administrator pursuant to Section 904.7(b)(5) in computing the blended price for August, 1941, resulted in decreasing the price to be received by the plaintiffs for milk delivered in said month by 1.55 cents per hundredweight. Larger deductions in succeeding months, upon the issuance of further qualifications by the defendant, will result in further decreases in the blended price to be received by the plaintiffs. The monthly deliveries made by each plaintiff range from 7,000 pounds to 26,000 pounds; and the reduction in the blended price by $1\frac{1}{2}$ cents or more to provide for the cooperative payments specified in Section 904.9 will result in annual losses to the individual plaintiffs ranging from \$10.50 to more than \$39.00 per year.

13. Said Order No. 4 as amended is promulgated under the authority of Sections 8c(5) and (7) of the Agricultural Marketing Agreement Act of 1937. Section 8c(5) specifies the terms which may be included in an order affecting milk and its products and reads in part as follows:

"In the case of milk and its products, orders issued pursuant to this section shall contain one or more of

the following terms and conditions, and (except as provided in subsection (7) no others: " * * "

None of the provisions of Section 8c(5) thereafter enumerated, or of subsection (7) therein referred to, authorizes Sections 904.9(a)-(d) and 904.7(b)(5) of said Order No. 4. Said provisions were issued as part of said Order No. 4 by the defendant Secretary of Agriculture without legal authority, and are unlawful and void; and said defendant, is without legal authority to make any qualifications of or to certify, any cooperative association as eligible for the payments specified in said Sections.

14. Unless the relief sought herein is granted, the plaintiffs are informed and believe that the defendant Secretary of Agriculture will forthwith issue qualifications to certain cooperatives whose applications therefor are now pending before him. Thereupon payments will be made to such cooperatives for deliveries of milk made in August, 1941, and said fund of \$15,575.31 will be dispersed and irretrievably lost to the plaintiffs and other producers serving the Greater Boston marketing area, to whom it rightfully belongs and to whom it should instead be paid in accordance with the provisions of said Agricultural Marketing Agreement Act of 1937; and further, in succeeding months similar funds will likewise be distributed in unlawful payments to cooperative associations and will likewise be dispersed and irretrievably lost to the plaintiffs and other producers, all of whom are entitled to be paid the blended price computed without deduction for such unlawful payments.

15. The aforesaid illegal deductions would deprive the plaintiffs and over six thousand other dairy farmers similarly situated of more than \$60,000.00 per year at a time when the plaintiffs and such other farmers require full payment for their milk in order to meet the rising costs of milk production.

16. The plaintiffs are not afforded a method of administrative relief in the aforesaid Agricultural Marketing Agreement Act of 1937 as amended, or otherwise; and said plaintiffs are without adequate remedy at law.

WHEREFORE, the plaintiffs pray:

(1) That a temporary restraining order be issued, enjoining the defendant from qualifying or certifying the qualification of any cooperative association of producers under Section 904.9 of said Order No. 4 as amended, and requiring the defendant to suspend any such qualifications or certifications theretofore made.

(2) That a preliminary injunction be issued during the pendency of this action, enjoining the defendant from qualifying or certifying the qualification of any cooperative association of producers under Section 904.9 of said Order No. 4 as amended, and requiring the defendant to suspend any such qualifications or certifications theretofore made.

(3) That a permanent injunction be issued, enjoining the defendant from qualifying or certifying the qualification of any cooperative association of producers under Section 904.9 of said Order No. 4 as amended, and requiring the defendant to withdraw or cancel any such qualifications or certifications theretofore made.

(4) That the Court declare the provisions of Section 904.9(a)-(d) and Section 904.7(b)(5) of said Order No. 4 to be unauthorized, illegal and void.

(5) That the plaintiffs have such other and further relief as is just.

Respectfully submitted,

DELBERT O. STARK,
Randolph, Vermont,
A. F. STRATTON,
Corinna, Maine,
A. R. DENTON,
Stowe, Vermont,
GEORGE STEBBINS,
Enosburg, Vermont,
FRANCIS WALSH,
Greenwich, N. Y.,

By their attorney,

Harry Polikoff,
HARRY POLIKOFF,
525 Lexington Ave.,
New York, N. Y.

Local Counsel:

WALTER J. BROBYN,
716 Investment Bldg.,
Washington, D. C.

STATE OF VERMONT, }
ORANGE COUNTY, } ss.:

September 20, 1941.

Then personally appeared before me DELBERT O. STARK, one of the plaintiffs named in the foregoing complaint, to me known, and deposed and said that he had read the foregoing complaint, and that the allegations contained therein are true to his own knowledge, except such allegations as are made on information and belief, and as to such allegations he believes them to be true; and that, unless a temporary restraining order is issued, the plaintiffs will suffer immediate and irreparable injury as alleged in said complaint.

DELBERT O. STARK (sgd.),
Plaintiff and Affiant.

Subscribed and sworn to before me,

PHILIP A. ANGELL (sgd.),

Notary Public.

(Seal) My commission expires Feb. 10, 1943.

EXHIBIT A

Exhibit A of Complaint (Order No. 4 as amended) appears *infra*, this Appendix.

EXHIBIT B

MARKET ADMINISTRATOR
for the
GREATER BOSTON MARKETING AREA
UNIFORM PRICES FOR 3.7 MILK, BY ZONES
August 1-31, 1941

*Blended Price
per cwt. to
Regular Producers**

*Class II Price
per cwt. to
New Producers*

For milk delivered to plants
located within 40 miles of
the State House in Boston

\$2.911

\$2.228

For milk delivered to plants
located more than 40 miles
from the State House in
Boston, as follows:

Zone	Miles		
6	51-60	2.595	2.058
10	91-100	2.569	2.058
11	101-110	2.565	2.058
12	111-120	2.560	2.058
13	121-130	2.552	2.058
14	131-140	2.542	2.058
15	141-150	2.527	2.058
16	151-160	2.513	2.058
17	161-170	2.513	2.058
18	171-180	2.490	2.058
19	181-190	2.481	2.058
(20	191-200	2.470	2.058)
21	201-210	2.470	2.058
22	211-220	2.442	2.058
23	221-230	2.436	2.058
24	231-240	2.432	2.058
25	241-250	2.432	2.058
26	251-260	2.421	2.058
27	261-270	2.415	2.058
28	271-280	2.410	2.058
29	281-290	2.410	2.058
30	291-300	2.400	2.058

*Handler subject to provisions of Section 904.6(d)

* **LOCATION DIFFERENTIALS**—To the above prices to **REGULAR PRODUCERS** ONLY are to be added the following amounts:

For milk from farms located within 40 miles of the State House in Boston or located in Barnstable or Plymouth Counties, Massachusetts.....	46¢ per cwt.
For milk from farms located within 41-80 miles of the State House in Boston.....	23¢ per cwt.

BUTTERFAT DIFFERENTIAL—To all producers, for each 1/10 of 1% variation from 3.7% test.....\$.052

DEDUCTIONS—From all the above prices, deductions are to be made as follows:

From members of qualified associations (Sec. 904.9(e)).

Such deductions as are authorized by members.

**MARKET ADMINISTRATOR—GREATER BOSTON
MARKETING AREA**

**HANDLERS WHOSE MILK WAS INCLUDED IN
THE BLENDED PRICE COMPUTATION**

For the period August 1-31, 1941

Ashland Farms Milk Co.
 Bellows Falls Co-op. Creamery, Inc.
 J. C. Black & Son
 A. Louis Bodge
 W. T. Boyd & Sons, Inc.
 James A. Bustead Co., Inc.
 David Buttrick Co.
 Cabot Farmers' Co-op. Creamery Co., Inc.
 Guy B. Chaloner
 George L. Chapin
 Cloverluck Dairy, Inc.
 C. W. Coburn
 S. Colombosian
 Michael W. and Daniel L. Comiskey, d/b/a Valley Farm
 Albert H. Crompton—

B. L. Cummings, Inc.
 J. M. Curran, d/b/a Our Haven Farm Dairy
 Louis W. Dean, d/b/a Dean Dairy
 Deerfoot Farms Company
 James deNormandie and Floyd Verrill, d/b/a The Dairy
 Logan R. Dickie, Jr., d/b/a Chestnut Hill Farm
 Dunajski Bros.
 Elliott Creameries, Inc.
 Elm Spring Farm Co-operative
 Fairview Creamery, Inc.
 Margaret A. Forbes, d/b/a Forbes Milk Company
 Mason Garfield, d/b/a River Road Farm
 Rocco L. Grasso, d/b/a Needham Dairy
 Benjamin R. Greenblott, d/b/a Hillcrest Farm Dairy
 Melville G. Grey, d/b/a Greycroft Farm
 Joseph L. Griffin
 John B. Henshaw & Son, Inc.
 Hillside Dairy Co., Inc.
 Harold W. Holden Corp.
 H. P. Hood & Sons, Inc.
 Frank T. Hutchinson, d/b/a Dell Dale Farm
 Kiley Farm
 Mrs. L. L. Kinsman, d/b/a Kinsman's Dairy
 George J. Knapp, Inc.
 John Kordalski
 August Korkatti, d/b/a Woodland Farm Dairy
 Harry Lanzillo, d/b/a Happy Valley Dairy
 F. W. Laroe and John E. Burr, d/b/a Laroe & Burr
 Walter Lovelace, d/b/a Lovelace Bros.
 Lyndonville Creamery Assn.
 Leo W. Madigan, d/b/a Maplehurst Farms
 Manchester Dairy System, Inc.
 Maple Hill Farm Dairy, Inc.
 Mrs. Lucinda A. Martin
 Martines Bros.
 Mason's Creamery Co.
 J. F. McAdams & Bros., Inc.

McCarty Bros. Milk Co., Inc.

A. J. McNeil & Sons, Inc.

Meadow Brook Farm, Inc.

Milton Co-op. Dairy Corp.

New England Dairies, Inc.

Norway Creamery, Inc.

* A. R. Parker Company

Pezold Creamery, Inc.

George W. Pierce, d/b/a Groveland Dairy

J. B. Prescott Co., Bedford Farms Dairy

Putnam Bros.

M. J. Quinn

Anthony W. Recka

A. J. Robinson, d/b/a Mountain View Creamery

St. Albans Co-op. Creamery, Inc.

John A. Sellars Dairy, Inc.

Seven Oaks Company, Inc.

Patrick J. Shanahan, d/b/a Lawrence Farms Milk Co.

Shawsheen Dairies, Inc.

John and Joseph Silva, d/b/a Paramount Dairy

Jacob Soroko, d/b/a Soroko's Farm Dairy

So. Strafford Creamery, Inc.

Clinton D. Spear

H. L. Stone Dairy, Inc.

United Farmers' Co-op. Creamery Assn., Inc.

Valley View Creamery, Roland Seward

Vermont Dairy Co., Inc.

Weiler-Sterling Farms Co.

Wells River Creamery, Inc.

White Bros.

White Bros. Milk Co., Inc.

White Creamery Co., Inc.

Whiting Milk Company

Granville A. Wiswall

Martin Witte, Trustee for Shawsheen Dairy, Inc.

* Handler subject to provisions of Section 904.6(a)

MARKET ADMINISTRATOR—GREATER BOSTON, MASSACHUSETTS,
MARKETING AREA

EXTRACTS FROM THE COMPUTATIONS WHICH RESULTED IN THE
UNIFORM PRICES ANNOUNCED FOR THE AUGUST 1-31, 1941 PERIOD
(Sec. 904.7(b)(9))

Sec. 904.7(b).

(1) Total of the respective values of milk.....	\$2,577,812.71	
(2) Total amount of payments required from handlers pursuant to Sec. 904.8(g) and (h).....		3,099.90
(3) Total net amount of the differentials applicable pursuant to Sec. 904.8(e).....		232,941.90
		<hr/> \$2,813,854.51
(4) Total amount to be paid to producers pursuant to Sec. 904.8(b)(2) (New Producers)	\$ 6,299.95	
(5) Total of payments required to be made for the delivery period pursuant to Sec. 904.9(b)	15,575.31	21,875.26
		<hr/> \$2,791,979.25
(6) Total milk received from regular producers. 100,571,285 lbs. Blended price per cwt.....		\$2.776
(7) Deduction for the purpose of retaining a cash balance045
		<hr/> \$2.731
(8) Addition for the purpose of prorating cash balance available050
Basic blended price from which zone prices are cal- culated		<hr/> \$2.781

	<i>Pounds of Milk</i>	
	<i>Total</i>	<i>Daily Average</i>
Total Receipts reported.....	100,875,197	3,254,039
Net Class I Milk reported.....	54,158,191	1,747,038
% Class I Milk to Total Receipts	53.69%	

Office of the Market Administrator
Room 746, 80 Federal Street, Boston, Mass.
September 12, 1941

ANSWER

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA.

<p>DELBERT O. STARK, et al., Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>CLAUDE R. WICKARD, Secretary of Agriculture for the United States, Defendant.</p>	}	<p>Civil Action No. 12944</p> <p style="text-align: right;">[13]</p>
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Claude R. Wickard, Secretary of Agriculture of the United States, answering the complaint exhibited against him herein, respectfully shows unto the Court:

FIRST DEFENSE

1. The complaint fails to state a claim against the defendant upon which relief can be granted.

SECOND DEFENSE

2. The defendant admits the allegations of paragraph 1 of the complaint with respect to the citizenship and residence of the plaintiffs, but avers that the essential elements of a class action are lacking and denies that plaintiffs herein

may prosecute this case "for the benefit of all other persons similarly situated".

3. The defendant admits the allegations of paragraphs 2, 3, 4, 5, 6, 8 and 9 of the complaint.

4. The defendant admits the allegations of paragraph 7, except the allegations that "all other producers whose milk is marketed pursuant to said Order No. 4 are paid the blended price as computed and announced by the Market Administrator pursuant to section 904.7"; the allegation that sub-paragraph (b)(5) of Section 904.7 of the order lacks "authority therefor"; and the allegation that the deductions therein mentioned are "unauthorized and illegal"; which allegations are denied. With respect to the first of said allegations denied as aforesaid, the defendant avers that many of the producers whose milk is marketed pursuant to Order No. 4 have demanded, and have been paid by handlers, prices higher than the announced blended price.

5. The allegations of paragraph 10 are admitted, except that it is denied that, at the time of the filing of the complaint, the Secretary of Agriculture had determined that certain cooperatives were qualified and entitled to receive payments; and that any such payments were made on or before September 25, 1941.

6. The allegations of paragraph 11 of the complaint purport merely to set forth the requirements of certain provisions of Order No. 4, as amended, and are admitted to the extent that they are not inconsistent with such provisions.

7. The allegations of paragraph 12 of the complaint are denied, except that it is admitted that the Market Administrator, in making the computations as required under Order No. 4, as amended, for the period August 1-31, 1941, set aside a reserve of \$15,575.31 to cover any payments required to be made for such delivery period pursuant to Section 904.9(b) of Order No. 4, as amended; that the

monthly deliveries made by the plaintiffs range, respectively, from 7,000 pounds to 26,000 pounds. Further answering said paragraph, defendant avers that, although the computations by which the plaintiffs reach the figure of 1.55 cents per hundredweight mentioned in said paragraph 12 appear to be mathematically correct, it does not follow that the blended price established under the order as the minimum price payable to the plaintiffs for milk would be 1.55 cents higher in the absence of the amendments complained of. The amount of the blended price is the result of the operation of the entire plan for orderly marketing embodied in the federal order. It is impossible to establish that in the absence of one element of the plan the remaining elements will operate without change. The conclusion reached by the plaintiffs that, on the basis of the volume of milk which they regularly deliver, the payments to cooperative associations authorized by the amendments will result in annual losses to the individual plaintiffs ranging from \$10.50 to approximately \$39.00 per year is not supported by adequate promises because the computation by which the alleged rate of reduction of 1.55 cents per hundredweight is reached is based on the blended price achieved by the plan of marketing which incorporates the amendments and the incentive to orderly marketing inspired and encouraged by the amendments. Loss to the plaintiffs cannot be shown because it is obviously impossible to determine for the purposes of comparison what the blended price would have been in the absence of such amendments. Furthermore, the announced blended price is at all times merely a minimum price payable to all producers supplying the market and the producer is free to demand and to receive any amount over and above the announced blended price.

8. The allegations of paragraphs 13 of the complaint are legal conclusions only, which the defendant is advised he is not required to answer, but, insofar as answer is required, said allegations are denied.

9. The allegations of paragraph 14 of the complaint are denied, except that it is admitted that the defendant intends to perform the duties required of him by the provisions of Order No. 4, as amended:

10. The allegations of paragraph 15 of the complaint are denied.

11. The allegations of paragraph 16 of the complaint are merely legal conclusions which the defendant is not required to answer, but, insofar as answer may be required, said allegations are denied and the defendant avers that, on the contrary, the plaintiffs are not subject to regulation under the Agricultural Marketing Agreement Act of 1937 or Order No. 4, as amended; that the plaintiffs are not required by said act and said order to do or to refrain from doing anything whatsoever, and the plaintiffs are free to demand and to receive from persons purchasing their milk any price which they desire in excess of the blended price announced by the Market Administrator under Order No. 4, as amended.

WHEREFORE, having fully answered the complaint, the defendant demands that the complaint herein be dismissed at the cost of the plaintiffs.

EDWARD M. CURRAN,
United States Attorney.

BERNARD J. LONG,
Assistant United States Attorney,
United States Court House,
Washington, D. C.

JOHN S. L. YOST,
Special Assistant to the Attorney General,
Department of Justice,
Washington, D. C.

FINAL JUDGMENT

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA.

DELBERT O. STARK, et al.,
Plaintiffs,

v.

CLAUDE R. WICKARD, Secretary of Agriculture of the United States,
Defendant.

Civil Action
No. 12944

[17]

The above entitled cause having come on to be heard upon the motion of the plaintiff to dismiss the first defense set forth in the defendant's answer, and all parties having agreed to consider the motion as a preliminary hearing on the first defense contained in the answer, and the Court having heard counsel for the respective parties in argument on the first defense aforesaid, and being advised, it is hereby:

ADJUDGED, ORDERED and DECREED as follows:

1. The first defense set forth in the defendant's answer be and it is hereby sustained.
2. The complaint be and it is hereby dismissed. Exception allowed the plaintiffs.

JESSE C. ADKINS,
United States District Judge.

Approved as to form:

HARRY POLIKOFF,
Attorney for Plaintiffs.

JOHN S. L. YOST,
Attorney for Defendant.

NOTICE OF APPEAL

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA.

D. O. STARK, A. F. STRATTON, A. R. DENTON,
GEO. STEBBINS and F. WALSH,
Plaintiffs,

VS.

Civil
No. 12944

CLAUDE R. WICKARD, Secretary of Agriculture of the United States,
Defendant.

[18]

Notice is hereby given this day of June, 1942, that D. O. Stark, A. F. Stratton, A. R. Denton, Geo. Stebbins and F. Walsh, plaintiffs herein, hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 27th day of May, 1942, in favor of defendant against said plaintiffs, dismissing the complaint to enjoin said defendant.

WALTER J. BROBYN,
HARRY POLIKOFF,
Attorneys for Plaintiffs.

Local Counsel:

WALTER J. BROBYN,
Investment Bldg.,
Washington, D. C.

STIPULATION

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA.

DELBERT O. STARK, et al.,

Plaintiffs,

v.

CLAUDE R. WICKARD, Secretary of Agriculture of the United States,
Defendant.

Civil Action
No. 12944

[20]

It is hereby stipulated by and between the plaintiffs, Delbert O. Stark, et al., and the defendant, Claude R. Wickard, Secretary of Agriculture of the United States, as follows:

1. On application of the plaintiffs under Rule 12(d) of the Federal Rules of Civil Procedure for preliminary hearing the above entitled cause came on for hearing before the Honorable Jesse C. Adkins on May 27, 1942, on the first defense contained in the defendant's answer, and at the conclusion of the said hearing the following statements were made by the Court and counsel:

The Court: Gentlemen, I am unable to distinguish this case from the two decisions of the Circuit Court of Appeals of the United States. [*Wallace v. Gauley*, 68 D. C. Appeals 235, 95 F. (2d) 364; *Massachusetts Farmers Defense Committee v. United States*, 26 F. Supp. 941].* It is true that we are dealing with a

* Appellants' note: *Massachusetts Farmers Defense Committee v. United States*, *supra*, is not a decision of the Circuit Court of Appeals but of the District Court for the Eastern District of Massachusetts (1939).

statute and the original order without this modification, but in both courts they expressly hold that the producers do not have standing in court to challenge the constitutionality of the Act or order.

Now, while the language of the complaint here is confined to challenging the validity of the order as amended, and does not use the word "constitutionality," I think it must be admitted from the discussion we have had that if it is invalid it is also attacked on the constitutional ground.

Mr. Polikoff: Yes. But may I say that does not necessarily follow for this reason: it may be invalid merely because it departs from the language of the statute. That is all we contend.

The Court: Even though you do not call it unconstitutional, I still think under the language of these two cases you have not established your case.

Mr. Polikoff: I have a brief—

The Court (interposing): You may give me a copy of the brief. I do not see how any more argument can prevent me from being controlled by these two decisions.

The only question is whether this case can be distinguished from the cases decided by those two decisions, and I am unable to do it.

So the order will be—I think we had better have some more direct provision than we have here: Recite in the order that it is agreed that this first defense, that this argument is on the first defense.

Mr. Yost: We may refer to it as Mr. Polikoff's motion under Rule 12-D for preliminary hearing.

The Court: You gentlemen agree on that. That will enable you to get the case in the Court of Appeals in the minimum amount of time, and if I am wrong they won't hesitate to correct me.

2. The following parts of the record, proceedings and evidence shall constitute the record on appeal:

- a. The complaint filed on September 22, 1941;
- b. the answer of the Secretary filed March 7, 1942;
- c. final judgment of the District Court entered May 27, 1942, sustaining the first defense set forth in the defendant's answer and dismissing the cause;
- d. notice of appeal from the judgment of May 27, 1942, filed on June 22, 1942;
- e. this stipulation.

3. The designations of the contents of the record heretofore filed by the parties hereto are hereby abandoned and superseded by this stipulation.

WALTER J. BROBYN,
Attorney for Plaintiffs.

HARRY POLIKOFF,
Of Counsel for Plaintiffs.

JOHN S. L. YOST,
Special Assistant to the Attorney General,
Attorney for the Defendant.

August 14, 1942.

UNITED STATES DEPARTMENT OF AGRICULTURE

DIVISION OF MARKETING AND MARKETING AGREEMENTS

**COMPILATION OF AGRICULTURAL
MARKETING AGREEMENT
ACT OF 1937**

**REENACTING, AMENDING, AND
SUPPLEMENTING THE AGRICULTURAL
ADJUSTMENT ACT, AS AMENDED**

**(Including Amendments of the
76th Congress, 1st Session)**



**UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1939**

PREFATORY NOTE

This compilation is intended to indicate the present status of legislation by Congress relating to marketing agreements and orders regulating the handling of agricultural commodities in interstate and foreign commerce. The Agricultural Marketing Agreement Act of 1937, approved June 3, 1937 (Public No. 137—75th Congress—Chap. 296, 1st Session, 7 U. S. C. A. 674, 50 Stat. 249), reenacted and amended certain provisions of the Agricultural Adjustment Act, as amended, relating to marketing agreements and orders. Related legislation enacted prior to June 3, 1937, is given in the compilation known as "Annotated Compilation of the Agricultural Adjustment Act, as Amended, and Acts Relating Thereto at the Close of the First Session of the Seventy-Fourth Congress, August 26, 1935": Superintendent of Documents, Washington, D. C.

Throughout the text of this compilation, bold face type is used for the language of the Agricultural Marketing Agreement Act of 1937; light face type is used for the language of the Agricultural Adjustment Act, as amended, as reenacted by the Agricultural Marketing Agreement Act of 1937; italics are used for amendments made by section 2 of the Agricultural Marketing Agreement Act of 1937 to the Agricultural Adjustment Act, as amended.

The provisions of section 2 of the Agricultural Marketing Agreement Act of 1937 are not set out *haec verba*. They are, however, incorporated in the body of the provisions of the Agricultural Adjustment Act, as amended, which they amend. References to the amendatory provisions of section 2 of the Agricultural Marketing Agreement Act of 1937 are contained in the footnotes. References to recent amendments to the Agricultural Adjustment Act, as amended, and to the Agricultural Marketing Agreement Act of 1937 are contained in the footnotes.

COMPILATION OF AGRICULTURAL MARKETING AGREEMENT ACT OF 1937 REENACTING, AMENDING AND SUPPLEMENT- ING THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED¹

AN ACT

To reenact and amend provisions of the Agricultural Adjustment Act, as amended, relating to marketing agreements and orders.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the following provisions of the Agricultural Adjustment Act, as amended, not having been intended for the control of the production of agricultural commodities, and having been intended to be effective irrespective of the validity of any other provision of that act are expressly affirmed and validated, and are reenacted without change except as provided in section 2:

(a) Section 1 (relating to the declaration of emergency):

DECLARATION

It is hereby declared that the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce.²

(b) Section 2 (relating to declaration of policy):

DECLARATION OF POLICY

SEC. 2. It is hereby declared to be the policy of Congress—

(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to establish and maintain such

¹For annotations to the Agricultural Adjustment Act, as amended; for provisions of that act not reenacted by the provisions of the Agricultural Marketing Agreement Act of 1937; and for other acts of Congress relating both to the Agricultural Adjustment Act, as amended, and to the Agricultural Marketing Agreement Act of 1937 see "Annotated Compilation of Agricultural Adjustment Act as Amended and Acts Relating Thereto at the Close of the First Session of the 74th Congress, August 26, 1935"; Superintendent of Documents, Washington, D. C.

²As amended by sec. 2 (a) of the Agricultural Marketing Agreement Act of 1937. The text of sec. 1 of the Agricultural Adjustment Act, as amended, was as follows:

"DECLARATION OF EMERGENCY

"That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities, and render imperative the immediate enactment of title I of this Act."

*orderly marketing conditions for agricultural commodities in interstate commerce as will establish*³ prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; and, in the case of all commodities for which the base period is the pre-war period, August 1909 to July 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during the base period. The base period in the case of all agricultural commodities except tobacco and potatoes shall be the pre-war period, August 1909-July 1914. In the case of tobacco and potatoes, the base period shall be the postwar period, August 1919-July 1929.

(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section.

(c) Section 8a (5), (6), (7), (8), and (9) relating to violations and enforcement;

SEC. 8a(5) Any person willfully exceeding any quota or allotment fixed for him under this title by the Secretary of Agriculture, and any other person knowingly participating, or aiding, in the exceeding of said quota or allotment, shall forfeit to the United States a sum equal to three times the current market value of such excess, which forfeiture shall be recoverable in a civil suit brought in the name of the United States.

(6) The several district courts of the United States are hereby vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating⁴ any order, regulation, or agreement, heretofore or hereafter made or issued pursuant to this title, in any proceeding now pending or hereafter brought in said courts.

(7) Upon the request of the Secretary of Agriculture, it shall be the duty of the several district attorneys of the United States, in their respective districts, under the directions of the Attorney General, to institute proceedings to enforce the remedies and to collect the forfeitures provided for in, or pursuant to, this title. Whenever the Secretary, or such officer or employee of the Department of Agriculture as he may designate for the purpose, has reason to believe that any handler has violated, or is violating, the provisions of any order or amendment thereto issued pursuant to this title, the Secretary shall have power to institute an investigation and, after due notice to such handler, to conduct a hearing in order to deter-

³ The italicized words were substituted, by sec. 2 (b) of the Agricultural Marketing Agreement Act of 1937, in lieu of the words: "balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will establish".

⁴ The following was deleted by section 2 (c) of the Agricultural Marketing Agreement Act of 1937: "the provisions of this section, or of".

mine the facts for the purpose of referring the matter to the Attorney General for appropriate action.

(8) The remedies provided for in this section shall be in addition to, and not exclusive of, any of the remedies or penalties provided for elsewhere in this title or now or hereafter existing at law or in equity.

(9) The term "person" as used in this title includes an individual, partnership, corporation, association, and any other business unit.

(d) Section 8b (relating to marketing agreements):

SEC. 8b. In order to effectuate the declared policy of this title, the Secretary of Agriculture shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, only with respect to such handling as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful: Provided, That no such agreement shall remain in force after the terminations of this Act. For the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under section 5 of the Reconstruction Finance Corporation Act. Such loans shall not be in excess of such amounts as may be authorized by the agreements.

(e) Section 8c (relating to orders):

ORDERS

SEC. 8c. (1) The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in this title as "handlers." Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.

COMMODITIES TO WHICH APPLICABLE

(2) Orders issued pursuant to this section shall be applicable only to the following agricultural commodities and the products thereof (except products of naval stores and the products of honeybees),⁵ or to any regional, or market classification of any such commodity or product: Milk, fruits (including pecans and walnuts but not including apples, other than apples produced in the States of Washington, Ore-

⁵The words "and the products of honeybees" were inserted by public, No. 246, 75th Congress, Chapter 567, 1st session, approved August 5, 1937.

gon, and Idaho," and not including fruits, other than olives, for canning), tobacco, vegetables (not including vegetables, other than asparagus, for canning), soybeans, hops,⁷ honeybees,⁸ and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin).

NOTICE AND HEARING

(3) Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this title with respect to any commodity or product thereof specified in subsection (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

FINDING AND ISSUANCE OF ORDER

(4) After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this title with respect to such commodity.

TERMS—MILK AND ITS PRODUCTS

(5) In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made, for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers.

(B) Providing:

(i) for the payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered by them; Provided, That, except in the

⁶ The words "other than apples produced in the States of Washington, Oregon, and Idaho," were added by Public, No. 98, 76th Congress, Chapter 157, 1st session, approved May 31, 1939.

⁷ The word "hops," was inserted by and the following provision was contained in Public, No. 482, 75th Congress, Chapter 143, 3d session, approved April 13, 1938:

"SEC. 3. No order issued pursuant to section 8c of the Agricultural Adjustment Act, as amended, shall be applicable to hops except during the two crop years next succeeding the date of enactment of this Act."

The provision quoted was amended by Public, No. 91, 76th Congress, Chapter 150, 1st session, approved May 26, 1939, to read as follows:

"SEC. 3. No orders issued pursuant to section 8c of the Agricultural Adjustment Act, as amended, shall be applicable to hops after September 1, 1942."

⁸ The word "honeybees," was inserted by Public, No. 246, 75th Congress, Chapter 567, 1st session, approved August 5, 1937.

case of orders covering milk products only, such provision is approved or favored by at least three-fourth of the producers who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from any other approval or disapproval provided for by this section; or

(ii) for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered;

subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered, (c) the locations at which delivery of such milk is made, and (d) a further adjustment, equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their *marketings*⁹ of milk during a representative period of time.

(C) In order to accomplish the purposes set forth in paragraphs (A) and (B) of this subsection (5), providing a method for making adjustments in payments, as among handlers (including producers who are also handlers), to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at the prices fixed in accordance with paragraph (A) hereof.

(D) Providing that, in the case of all milk purchased by handlers from any producer who did not regularly sell milk during a period of 30 days next preceding the effective date of such order for consumption in the area covered thereby, payments to such producer, for the period beginning with the first regular delivery by such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month, shall be made at the price for the lowest use classification specified in such order, subject to the adjustments specified in paragraph (B) of this subsection (5).

(E) Providing (i) except as to producers for whom such services are being rendered by a cooperative marketing association, qualified as provided in paragraph (F) of this subsection (5), for market information to producers and for the verification of weights, sampling, and testing of milk purchased from producers, and for making appropriate deductions therefor from payments to producers, and (ii) for assurance of, and security for, the payment by handlers for milk purchased.

(F) Nothing contained in this subsection (5) is intended or shall be construed to prevent a cooperative marketing association qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," engaged in making

⁹The word "production" was deleted and the word "marketings" was substituted by section 2 (d) of the Agricultural Marketing Agreement Act of 1937.

collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers: Provided, That it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this subsection (5) for such milk.

(G) No marketing agreement or order applicable to milk and its products in any marketing area shall prohibit or in any manner limit, in the case of the products of milk, the marketing in that area of any milk or product thereof produced in any production area in the United States.

TERMS—OTHER COMMODITIES

(6) In the case of fruits (including pecans and walnuts but not including apples, *other than apples produced in the States of Washington, Oregon, and Idaho*,¹⁰ and not including fruits, other than olives, for canning) and their products, tobacco and its products, vegetables (not including vegetables, other than asparagus, for canning) and their products, soybeans and their products, *hops*,¹¹ *honeybees*,¹² and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin), orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

(A) Limiting, or providing methods for the limitation of, the total quantity of any such commodity or product, or of any grade, size, or quality thereof, produced during any specified period or periods; which may be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods by all handlers thereof.

(B) Allotting, or providing methods for allotting, the amount of such commodity or product, or any grade, size, or quality thereof, which each handler may purchase from or handle on behalf of any and all producers thereof, during any specified period or periods, under a uniform rule based upon the amounts¹³ sold by such producers in such prior period as the Secretary determines to be representative, or upon the current *quantities available for sale by*¹⁴ such producers, or both, to the end that the total quantity thereof to be purchased, or handled during any specified period or periods shall be apportioned equitably among producers.

(C) Allotting, or providing methods for allotting, the amount of any such commodity or product, or any grade, size, or quality thereof, which each handler may market in or transport to any or all markets

¹⁰ Public, No. 98, 76th Congress, Chapter 157, 1st session, approved May 31, 1939.

¹¹ Public, No. 482, 75th Congress, Chapter 143, 3d session, approved April 13, 1938.

¹² Public, No. 246, 75th Congress, Chapter 567, 1st session, approved August 5, 1937.

¹³ The words "produced or" were deleted by section 2 (e) of the Agricultural Marketing Agreement Act of 1937.

¹⁴ The italicized words were substituted by section 2 (e) of the Agricultural Marketing Agreement Act of 1937, in lieu of the words: "production or sales of".

in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, under a uniform rule based upon the amounts which each such handler has available for current shipment, or upon the amounts shipped by each such handler in such prior period as the Secretary determines to be representative, or both, to the end that the total quantity of such commodity or product, or any grade, size, or quality thereof, to be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods shall be equitably apportioned among all of the handlers thereof.

(D) Determining, or providing methods for determining, the existence and extent of the surplus of any such commodity or product, or of any grade, size, or quality thereof, and providing for the control and disposition of such surplus, and for equalizing the burden of such surplus elimination or control among the producers and handlers thereof.

(E) Establishing, or providing for the establishment of, reserve pools of any such commodity or product, or of any grade, size, or quality thereof, and providing for the equitable distribution of the net return derived from the sale thereof among the persons beneficially interested therein.

TERMS COMMON TO ALL ORDERS

(7) In the case of the agricultural commodities and the products thereof specified in subsection (2) orders shall contain one or more of the following terms and conditions:

(A) Prohibiting unfair methods of competition and unfair trade practices in the handling thereof.

(B) Providing that (except for milk and cream to be sold for consumption in fluid form) such commodity or product thereof, or any grade, size, or quality thereof shall be sold by the handlers thereof only at prices filed by such handlers in the manner provided in such order.

(C) Providing for the selection by the Secretary of Agriculture, or a method for the selection, of an agency or agencies and defining their power and duties, which shall include only the powers:

(i) To administer such order in accordance with its terms and provisions;

(ii) To make rules and regulations to effectuate the terms and provisions of such order;

(iii) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of such order; and

(iv) To recommend to the Secretary of Agriculture amendments to such order.

No person acting as a member of an agency established pursuant to this paragraph (C) shall be deemed to be acting in an official capacity, within the meaning of section 10 (g) of this title, unless such person receives compensation for his personal services from funds of the United States.

(D) Incidental to, and not inconsistent with, the terms and conditions specified in subsections (5), (6), and (7) and necessary to effectuate the other provisions of such order.

ORDERS WITH MARKETING AGREEMENT

(8) Except as provided in subsection (9) of this section, no order issued pursuant to this section shall become effective until the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of not less than 50 per centum of the volume of the commodity or product thereof covered by such order which is produced or marketed within the production or marketing area defined in such order have signed a marketing agreement, entered into pursuant to section 8b of this title, which regulates the handling of such commodity or product in the same manner as such order, except that as to citrus fruits produced in any area producing what is known as California citrus fruits no order issued pursuant to this subsection (8) shall become effective until the handlers of not less than 80 per centum of the volume of such commodity or product thereof covered by such order have signed such a marketing agreement: Provided, That no order issued pursuant to this subsection shall be effective unless the Secretary of Agriculture determines that the issuance of such order is approved or favored:

(A) By at least two-thirds of the producers who (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers), during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(B) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

ORDERS WITH OR WITHOUT MARKETING AGREEMENT

(9) Any order issued pursuant to this section shall become effective in the event that, notwithstanding the refusal or failure of handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) covered by such order which is produced or marketed within the production or marketing area defined in such order to sign a marketing agreement relating

to such commodity or product thereof, on which a hearing has been held, the Secretary of Agriculture, with the approval of the President, determines:

(A) That the refusal or failure to sign a marketing agreement (upon which a hearing has been held) by the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) specified therein which is produced or marketed within the production or marketing area specified therein tends to prevent the effectuation of the declared policy of this title with respect to such commodity or product, and

(B) That the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy, and is approved or favored:

(i) By at least two-thirds of the producers (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers) who, during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(ii) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

MANNER OF REGULATION AND APPLICABILITY

(10) No order shall be issued under this section unless it regulates the handling of the commodity or product covered thereby in the same manner as, and is made applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held. No order shall be issued under this title prohibiting, regulating, or restricting the advertising of any commodity or product covered thereby, nor shall any marketing agreement contain any provision prohibiting, regulating, or restricting the advertising of any commodity or product covered by such marketing agreement.

REGIONAL APPLICATION

(11) (A) No order shall be issued under this section which is applicable to all production areas or marketing areas, or both, of any commodity or product thereof unless the Secretary finds that the issuance of several orders applicable to the respective regional pro-

duction areas or regional marketing areas, or both, as the case may be, of the commodity or product would not effectively carry out the declared policy of this title.

(B) Except in the case of milk and its products, orders issued under this section shall be limited in their application to the smallest regional production areas or regional marketing areas, or both, as the case may be, which the Secretary finds practicable, consistently with carrying out such declared policy.

(C) All orders issued under this section which are applicable to the same commodity or product thereof shall, so far as practicable, prescribe such different terms, applicable to different production areas and marketing areas, as the Secretary finds necessary to give due recognition to the differences in production and marketing of such commodity or product in such areas.

COOPERATIVE ASSOCIATION REPRESENTATION

(12) Whenever, pursuant to the provisions of this section, the Secretary is required to determine the approval or disapproval of producers with respect to the issuance of any order, or any term or condition thereof, or the termination thereof, the Secretary shall consider the approval or disapproval by any cooperative association of producers, bona fide engaged in marketing the commodity or product thereof covered by such order, or in rendering services for or advancing the interests of the producers of such commodity, as the approval or disapproval of the producers who are members of, stockholders in, or under contract with, such cooperative association of producers.

RETAILER AND PRODUCER EXEMPTION

(13) (A) No order issued under subsection (9) of this section shall be applicable to any person who sells agricultural commodities or products thereof at retail in his capacity as such retailer, except to a retailer in his capacity as a retailer of milk and its products.

(B) No order issued under this title shall be applicable to any producer in his capacity as a producer.

VIOLATION OF ORDER

(14) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order (other than a provision calling for payment of a pro rata share of expenses) shall, on conviction, be fined not less than \$50 or more than \$500 for each such violation, and each day during which such violation continues shall be deemed a separate violation: Provided, That if the court finds that a petition pursuant to subsection (15) of this section was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under this subsection for such violations as occurred between the date upon which the defendant's petition was filed with the Secretary, and the date upon which notice of the Secretary's ruling thereon was given to the defendant in accordance with regulations prescribed pursuant to subsection (15).

PETITION BY HANDLER AND REVIEW

(15) (A) Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(B) The District Courts of the United States (including the Supreme Court of the District of Columbia) in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 8a (6) of this title. Any proceedings brought pursuant to section 8a (6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15)) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15).

TERMINATION OF ORDERS AND MARKETING AGREEMENTS

(16) (A) The Secretary of Agriculture shall, whenever he finds that any order issued under this section, or any provision thereof, obstructs or does not tend to effectuate the declared policy of this title, terminate or suspend the operation of such order or such provision thereof.

(B) The Secretary shall terminate any marketing agreement entered into under section 8b, or order issued under this section, at the end of the then current marketing period for such commodity, specified in such marketing agreement or order, whenever he finds that such termination is favored by a majority of the producers who, during a representative period determined by the Secretary, have been engaged in the production for market of the commodity specified in such marketing agreement or order, within the production area specified in such marketing agreement or order, or who, during such representative period, have been engaged in the production of such commodity for sale within the marketing area specified in such marketing agreement or order: Provided, That such majority have,

during such representative period, produced for market more than 50 per centum of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or have, during such representative period, produced more than 50 per centum of the volume of such commodity sold in the marketing area specified in such marketing agreement or order, but such termination shall be effective only if announced on or before such date (prior to the end of the then current marketing period) as may be specified in such marketing agreement or order.

(C) The termination or suspension of any order or amendment thereto or provision thereof, shall not be considered an order within the meaning of this section.

PROVISIONS APPLICABLE TO AMENDMENTS

(17) The provisions of this section, section 8d, and section 8e applicable to orders shall be applicable to amendments to orders: Provided, That notice of a hearing upon a proposed amendment to any order issued pursuant to section 8c, given not less than three days prior to the date fixed for such hearing, shall be deemed due notice thereof.

Milk Prices

(18) *The Secretary of Agriculture, prior to prescribing any term in any marketing agreement or order, or amendment thereto, relating to milk or its products, if such term is to fix minimum prices to be paid to producers or associations of producers, or prior to modifying the price fixed in any such term, shall ascertain, in accordance with section 2 and section 8c, the prices that will give such commodities a purchasing power equivalent to their purchasing power during the base period. The level of prices which it is declared to be the policy of Congress to establish in section 2 and section 8c shall, for the purposes of such agreement, order, or amendment, be such level as will reflect the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand, for milk or its products in the marketing area to which the contemplated marketing agreement, order, or amendment relates. Whenever the Secretary finds, upon the basis of the evidence adduced at the hearing required by section 8b or 8c, as the case may be, that the prices that will give such commodities a purchasing power equivalent to their purchasing power during the base period as determined pursuant to section 2 and section 8c are not reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk and its products in the marketing area to which the contemplated agreement, order, or amendment relates, he shall fix such prices as he finds will reflect such factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest. Thereafter, as the Secretary finds necessary on account of changed circumstances, he shall, after due notice and opportunity for hearing, make adjustments in such prices.¹⁵*

¹⁵ This italicized subsection was added by sec. 2 (f) of the Agricultural-Marketing Agreement Act of 1937.

PRODUCER REFERENDUM

(19) *For the purpose of ascertaining whether the issuance of an order is approved or favored by producers, as required under the applicable provisions of this title, the Secretary may conduct a referendum among producers. The requirements of approval or favor under any such provision shall be held to be complied with if, of the total number of producers, or the total volume of production, as the case may be, represented in such referendum, the percentage approving or favoring is equal to or in excess of the percentage required under such provision. Nothing in this subsection shall be construed as limiting representation by cooperative associations as provided in subsection (12).¹⁸*

(f) Section 8d (relating to books and records);

BOOKS AND RECORDS

SEC. 8d. (1) All parties to any marketing agreement, and all handlers subject to an order, shall severally, from time to time, upon the request of the Secretary, to furnish him with such information as he finds to be necessary to enable him to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated the declared policy of this title, and with such information as he finds to be necessary to determine whether or not there has been any abuse of the privilege of exemptions from the anti-trust laws. Such information shall be furnished in accordance with forms of reports to be prescribed by the Secretary. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this subsection, or for the purpose of obtaining the information required in any such report, where it has been requested and has not been furnished, the Secretary is hereby authorized to examine such books, papers, records, copies of income-tax reports, accounts, correspondence, contracts, documents, or memoranda, as he deems relevant and which are within the control (1) of any such party to such marketing agreement, or any such handler, from whom such report was requested or (2) of any person having, either directly or indirectly, actual or legal control of or over such party or such handler or (3) of any subsidiary of any such party, handler, or person.

(2) Notwithstanding the provisions of section 7, all information furnished to or acquired by the Secretary of Agriculture pursuant to this section shall be kept confidential by all officers and employees of the Department of Agriculture and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which he or any officer of the United States is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (A) the issuance of general statements based upon the reports of a num-

¹⁸ This italicized subsection was added by sec. 2 (f) of the Agricultural Marketing Agreement act of 1937.

ber of parties to a marketing agreement or of handlers subject to an order, which statements do not identify the information furnished by any person, or (B) the publication by direction of the Secretary, of the name of any person violating any marketing agreement or any order, together with a statement of the particular provisions of the marketing agreement or order violated by such person. Any such officer or employee violating the provisions of this section shall upon conviction be subject to a fine of not more than \$1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office.

(g) Section 8e (relating to determination of base period);

DETERMINATION OF BASE PERIOD

SEC. 8e. In connection with the making of any marketing agreement or the issuance of any order, if the Secretary finds and proclaims that, as to any commodity specified in such marketing agreement or order, the purchasing power during the base period specified for such commodity in section 2 of this title cannot be satisfactorily determined from available statistics of the Department of Agriculture, the base period, for the purposes of such marketing agreement or order, shall be the post-war period, August 1919-July 1929, or all that portion thereof for which the Secretary finds and proclaims that the purchasing power of such commodity can be satisfactorily determined from available statistics of the Department of Agriculture.

(h) Section 10 (a), (b) (2), (c), (f), (g), (h), and (i) (miscellaneous provisions);

MISCELLANEOUS

SEC. 10. (a) The Secretary of Agriculture may appoint such officers and employees, subject to the provisions of the Classification Act of 1923 and Acts amendatory thereof, and such experts as are necessary to execute the functions vested in him by this title; and the Secretary may make such appointments without regard to the civil service laws or regulations: Provided, That no salary in excess of \$10,000 per annum shall be paid to any officer, employee, or expert of the Agricultural Adjustment Administration, which the Secretary shall establish in the Department of Agriculture for the administration of the functions vested in him by this title: And provided further, That the State Administrator appointed to administer this Act in each State shall be appointed by the President, by and with the advice and consent of the Senate. Title II of the Act entitled "An Act to maintain the credit of the United States Government", approved March 20, 1933, to the extent that it provides for the impoundment of appropriations on account of reductions in compensation, shall not operate to require such impoundment under appropriations contained in this Act.

(b) (2)¹⁷ Each order issued by the Secretary under this title shall provide that each handler subject thereto shall pay to any authority

¹⁷ Sec. 10 (b) (2) of the Agricultural Adjustment Act, as amended.

or agency established under such order such handler's pro rata share (as approved by the Secretary) of such expenses as the Secretary may find will necessarily be incurred by such authority or agency, during any period specified by him, for the maintenance and functioning of such authority or agency, other than expenses incurred in receiving, handling, holding, or disposing of any quantity of a commodity received, handled, held, or disposed of by such authority or agency for the benefit or account of persons other than handlers subject to such order. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the agricultural commodity or product thereof covered by such order which is distributed, processed, or shipped by such cooperative association of producers. Any such authority or agency may maintain in its own name, or in the names of its members, a suit against any handler subject to an order for the collection of such handler's pro rata share of expenses. The several District Courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy.

(c) The Secretary of Agriculture is authorized, with the approval of the President, to make such regulations with the force and effect of law as may be necessary to carry out the powers vested in him by this title.¹⁸ Any violation of any regulation shall be subject to such penalty, not in excess of \$100, as may be provided therein.

(f) The provisions of this title shall be applicable to the United States and its possessions, except the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam; except that, in the case of sugar beets and sugarcane, the President, if he finds it necessary in order to effectuate the declared policy of this Act, is authorized by proclamation to make the provisions of this title applicable to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam.¹⁹

(g) No person shall, while acting in any official capacity in the administration of this title, speculate, directly or indirectly, in any agricultural commodity or product thereof, to which this title applies, or in contracts relating thereto, or in the stock or membership interests of any association or corporation engaged in handling, processing, or disposing of any such commodity or product. Any person violating this subsection shall upon conviction thereof be fined not more than \$10,000 or imprisoned not more than two years, or both.

(h) For the efficient administration of the provisions of part 2 of this title, the provisions, including penalties, of sections 8, 9, and 10 of the Federal Trade Commission Act, approved September 26, 1914, are made applicable to the jurisdiction, powers, and duties of the Secretary in administering the provisions of this title and to any

¹⁸ Sec. 2 (g) of the Agricultural Marketing Agreement Act of 1937 deletes the following: "including regulations establishing conversion factors for any commodity and article processed therefrom to determine the amount of tax imposed or refunds to be made with respect thereto".

¹⁹ Sec. 2 (h) of the Agricultural Marketing Agreement Act of 1937 deletes the sentence: "The President is authorized to attach by Executive order any or all such possessions to any internal-revenue collection district for the purpose of carrying out the provisions of this title with respect to the collection of taxes".

person subject to the provisions of this title, whether or not a corporation. Hearings authorized or required under this title shall be conducted by the Secretary of Agriculture or such officer or employee of the Department as he may designate for the purpose. The Secretary may report any violation of any agreement entered into under part 2 of this title to the Attorney General of the United States, who shall cause appropriate proceedings to enforce such agreement to be commenced and prosecuted in the proper courts of the United States without delay.

(i) The Secretary of Agriculture upon the request of the duly constituted authorities of any State is directed, in order to effectuate the declared policy of this title and in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof, to confer with and hold joint hearings with the duly constituted authorities of any State, and is authorized to cooperate with such authorities; to accept and utilize, with the consent of the State, such State and local officers and employees as may be necessary; to avail himself of the records and facilities of such authorities; to issue orders (subject to the provisions of section 8c) complementary to orders or other regulations issued by such authorities; and to make available to such State authorities the records and facilities of the Department of Agriculture: Provided, That information furnished to the Secretary of Agriculture pursuant to section 8d (1) hereof shall be made available only to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities, and then only upon a written agreement by such authorities that the information so furnished shall be kept confidential by them in a manner similar to that required of Federal officers and employees under the provisions of section 8d (2) hereof.

(j) *The term "interstate or foreign commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia. For the purpose of this Act (but in nowise limiting the foregoing definition) a marketing transaction in respect to an agricultural commodity or the product thereof shall be considered in interstate or foreign commerce if such commodity or product is part of that current of interstate or foreign commerce usual in the handling of the commodity or product whereby they, or either of them, are sent from one State to end their transit, after purchase, in another, including all cases where purchase or sale is either for shipment to another State or for the processing within the State and the shipment outside the State of the product so processed. Agricultural commodities or products thereof normally in such current of interstate or foreign commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. As used herein, the word "State" includes*

Territory, the District of Columbia, possession of the United States, and foreign nations.²⁰

(i) Section 12 (a) and (c) (relating to appropriation and expense);

APPROPRIATION

SEC. 12. (a) There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$100,000,000 to be available to the Secretary of Agriculture for administrative expenses under this title and for payments authorized to be made under section 8. Such sum shall remain available until expended.

To enable the Secretary of Agriculture to finance, under such terms and conditions as he may prescribe, surplus reductions²¹ with respect to the dairy- and beef-cattle industries, and to carry out any of the purposes described in subsections (a) and (b) of this section (12) and to support and balance the market for the dairy and beef cattle industries, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$200,000,000; Provided, That not more than 60 per centum of such amount shall be used for either of such industries.

(c) The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books and book of reference, for contract stenographic reporting services, and for printing and paper in addition to allotments under the existing law. The Secretary of Agriculture shall transfer to the Treasury Department, and is authorized to transfer to other agencies, out of funds available for administrative expenses under this title, such sums as are required to pay administrative expenses incurred and refunds made by such department or agencies in the administration of this title.

(j) Section 14 (relating to separability);

SEPARABILITY OF PROVISIONS

SEC. 14. If any provision of this title is declared unconstitutional, or the applicability thereof to any person, circumstance, or commodity is held invalid the validity of the remainder of this title and the applicability thereof to other persons, circumstances, or commodities shall not be affected thereby.

(k) Section 22 (relating to imports);

IMPORTS

SEC. 22 (a) Whenever the President has reason to believe that any one or more articles are being imported into the United States under such conditions and in sufficient quantities as to render or tend

²⁰ This italicized subsection was added by sec. 2 (i) of the Agricultural Marketing Agreement Act of 1937.

²¹ Sec. 2 (j) of the Agricultural Marketing Agreement Act of 1937 deletes the words: "and production adjustments".

to render ineffective or materially interfere with any program or operation undertaken, or to reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which any program is in operation, under this title, or the Soil Conservation and Domestic Allotment Act, as amended, he shall cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties and shall be conducted subject to such regulations as the President shall specify.

(b) If, on the basis of such investigation and report to him of findings and recommendations made in connection therewith, the President finds the existence of such facts, he shall by proclamation impose such limitations on the total quantities of any article or articles which may be imported as he finds and declares shown by such investigation to be necessary to prescribe in order that the entry of such article or articles will not render or tend to render ineffective or materially interfere with any program or operation undertaken, or will not reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which any program is in operation, under this title or the Soil Conservation and Domestic Allotment Act, as amended: Provided, That no limitation shall be imposed on the total quantity of any article which may be imported from any country which reduces such permissible total quantity to less than 50 per centum of the average annual quantity of such article which was imported from such country during the period from July 1, 1928, to June 30, 1933, both dates inclusive.

(c) No import restriction proclaimed by the President under this section nor any revocation, suspension, or modification thereof shall become effective until fifteen days after the date of such proclamation, revocation, suspension, or modification.

(d) Any decision of the President as to facts under this section shall be final.

(e) After investigation, report, finding, and declaration in the manner provided in the case of a proclamation issued pursuant to subsection (b) of this section, any proclamation or provision of such proclamation may be suspended by the President whenever he finds that the circumstances requiring the proclamation or provision thereof no longer exists, or may be modified by the President whenever he finds that changed circumstances require such modification to carry out the purposes of this section.²²

Sec. 2. The following provisions, reenacted in section 1 of this act, are amended as follows: ²³

Sec. 3. (a) The Secretary of Agriculture, or such officer or employee of the Department of Agriculture as may be designated

²² Sec. 5 of Public, No. 461, 74th Cong., approved February 29, 1936, amended sec. 22 of the Agricultural Adjustment Act, as amended, by inserting after the words "this title" wherever they appeared, the words "or the Soil Conservation and Domestic Allotment Act, as amended,"; and by deleting the words "an adjustment" whenever they appeared, and inserting in lieu thereof the word "any."

²³ Subsections (a) to (j) inclusive, of section 2 of the Agricultural Marketing Agreement Act of 1937 are incorporated in the preceding text and in the footnotes.

by him, upon written application of any cooperative association, incorporated or otherwise, which is in good faith owned or controlled by producers or organizations thereof, of milk or its products, and which is bona fide engaged in collective processing or preparing for market or handling or marketing (in the current of interstate or foreign commerce, as defined by paragraph (i) of section 2 of this act), milk or its products, may mediate and, with the consent of all parties, shall arbitrate if the Secretary has reason to believe that the declared policy of the Agricultural Adjustment Act, as amended, would be effectuated thereby, bona fide disputes, between such associations and the purchasers or handlers or processors or distributors of milk or its products, as to terms and conditions of the sale of milk or its products. The power to arbitrate under this section shall apply only to such subjects of the term or condition in dispute as could be regulated under the provisions of the Agricultural Adjustment Act, as amended, relating to orders for milk and its products.

(b) Meetings held pursuant to this section shall be conducted subject to such rules and regulations as the Secretary may prescribe.

(c) No award or agreement resulting from any such arbitration or mediation shall be effective unless and until approved by the Secretary of Agriculture, or such officer or employee of the Department of Agriculture as may be designated by him, and shall not be approved if it permits any unlawful trade practice or any unfair method of competition.

(d) No meeting so held and no award or agreement so approved shall be deemed to be in violation of any of the antitrust laws of the United States.

Sec. 4. Nothing in this act shall be construed as invalidating any marketing agreement, license, or order, or any regulation relating to, or any provision of, or any act of the Secretary of Agriculture in connection with, any such agreement, license, or order which has been executed, issued, approved, or done under the Agricultural Adjustment Act, or any amendment thereof, but such marketing agreements, licenses, orders, regulations, provisions, and acts are hereby expressly ratified, legalized, and confirmed.

Sec. 5. No processing taxes or compensating taxes shall be levied or collected under the Agricultural Adjustment Act, as amended. Except as provided in the preceding sentence, nothing in this act shall be construed as affecting provisions of the Agricultural Adjustment Act, as amended, other than those enumerated in section 1. The provisions so enumerated shall apply in accordance with their terms (as amended by this act) to the provisions of the Agricultural Adjustment Act, this act, and other provisions of law to which they have been heretofore made applicable.

Sec. 6. This act may be cited as the "Agricultural Marketing Agreement Act of 1937."

UNITED STATES DEPARTMENT OF AGRICULTURE

SURPLUS MARKETING ADMINISTRATION

T. 7, CH. IX, CODE OF FED. REGS.

MARKETING ORDERS—PART 904

ORDER, AS AMENDED, REGULATING THE HANDLING OF MILK IN THE
GREATER BOSTON, MASSACHUSETTS, MARKETING AREA¹

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The Secretary of Agriculture pursuant to the powers conferred upon the Secretary by Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, issued, effective February 4, 1940, an order, as amended, regulating the handling of milk in the Greater Boston, Massachusetts, marketing area.

There being reason to believe that amendments to said order, as amended, would tend to effectuate the declared policy of the act, notice was given on the 3d day of October 1940, of a public hearing which was held at Montpelier, Vermont, on the 14th day of October 1940; at Augusta, Maine, on the 16th day of October 1940; and at Boston, Massachusetts, on the 17th day of October 1940, and notice was given on the 8th day of May 1941 of a reopening of said hearing, which was held at Montpelier, Vermont, on the 14th day of May 1941, and at Boston, Massachusetts, on the 15th day of May 1941, at which times and places all interested parties were afforded an opportunity to be heard on proposed amendments to the order, as amended.

The requirements of section 8c (9) of the act have been complied with.

SECTION 904.0 Findings. The Secretary finds, upon the evidence introduced at the last above-mentioned hearings, said findings being in addition to the findings made upon the evidence introduced at the original hearings on said order, and on amendments to said order, and being in addition to the other findings and determinations made prior to or at the time of the original issuance of said order, and of amendments thereto (which findings are hereby ratified and

¹ Section 904.0 to and including Sec. 904.11 issued under the authority contained in 48 Stat. 31 (1933), 7 U. S. C. § 601 et seq. (1934); 49 Stat. 750 (1935); 50 Stat. 246 (1937); 7 U. S. C. 601 et seq. (Supp. IV 1938).

affirmed save only as such findings are in conflict with the findings hereinafter set forth):

1. That the prices calculated to give milk produced for sale in said marketing area a purchasing power equivalent to the purchasing power of such milk, as determined pursuant to sections 2 and 8 (e) of said act, are not reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions which affect the market supply and demand for such milk, and that the minimum prices fixed in this order, as amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

2. That the provisions relating to producer-handlers exempt from the regulation of the order, as amended, only such persons as are producers handling milk of their own production;

3. That the provisions relating to the payments out of the equalization pool to cooperative associations performing certain marketing services are incidental to, not inconsistent with, the other provisions of the order, as amended, and necessary to effectuate the other provisions of the order, as amended;

4. That all the remaining provisions of the order, as amended, are necessary to effectuate the other provisions of the order, as amended;

5. That the order, as amended, regulates the handling of milk in the same manner as a marketing agreement, as amended, upon which hearings have been held; and

6. That the issuance of the order, as amended, and all of its terms and conditions will tend to effectuate the declared policy of the act.

IT IS HEREBY ORDERED that such handling of milk in the Greater Boston, Massachusetts, marketing area as is in the current of interstate commerce or as directly burdens, obstructs, or affects interstate commerce shall, from the effective date hereof, be in compliance with the following terms and conditions:

SEC. 904.1 Definitions. (a) **TERMS.** The following terms shall have the following meanings:

(1) The term "act" means the Agricultural Marketing Agreement Act of 1937 which reenacts and further amends Public Act. No. 10, 73d Congress, as amended.

(2) The term "Secretary" means the Secretary of Agriculture of the United States.

(3) The term "Greater Boston, Massachusetts, marketing area," hereinafter called the "marketing area," means the territory included within the boundary lines of the cities and towns of Arlington, Belmont, Beverly, Boston, Braintree, Brookline, Cambridge, Chelsea, Dedham, Everett, Lexington, Lynn, Malden, Marblehead, Medford, Melrose, Milton, Nahant, Needham, Newton, Peabody, Quincy, Reading, Revere, Salem, Saugus, Somerville, Stoneham, Swampscott, Wakefield, Waltham, Watertown, Wellesley, Weymouth, Winchester, Winthrop, and Woburn, Massachusetts.

(4) The term "person" means any individual, partnership, corporation, association, or any other business unit.

(5) The term "producer" means any person who, in conformity with the health regulations which are applicable to milk which is sold for consumption as milk in the marketing area, produces milk and distributes or delivers to a handler, milk of his own production.

(6) The term "handler" means any person, irrespective of whether such person is a producer or an association of producers, wherever located or operating, who engages in such handling of milk, which is sold as milk or cream in the marketing area, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects interstate or foreign commerce in milk and its products.

(7) The term "producer-handler" means any handler who is also a producer and who receives no milk from other producers and who either (a) has average daily receipts of less than 1,000 pounds of milk from his own farm production, or (b) uses for the processing and packaging of the milk distributed by him facilities located on a farm on which at least 25 percent of his own production is made.

(8) The term "market administrator" means the person designated pursuant to Sec. 904.2 as the agency for the administration hereof.

(9) The term "delivery period" means the current marketing period from the effective date hereof to and including the last day of that month. Subsequent to that month "delivery period" means the current marketing period from the first to and including the last day of each month.

SEC. 904.2. Market administrator. (a) **SELECTION, REMOVAL, AND BOND.** The market administrator shall be selected by the Secretary and shall be subject to removal by him at any time. The market administrator shall, within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

(b) **COMPENSATION.** The market administrator shall be entitled to such reasonable compensation as may be determined by the Secretary.

(c) **POWERS.** The market administrator shall have power:

(1) To administer the terms and provisions hereof; and

(2) To receive, investigate, and report to the Secretary complaints of violations of the terms and provisions hereof.

(d) **DUTIES.** The market administrator, in addition to the duties hereinafter described shall:

(1) Keep such books and records as will clearly reflect the transactions provided for herein;

(2) Submit his books and records to examination by the Secretary at any and all times;

(3) Furnish such information and such verified reports as the Secretary may request;

(4) Obtain a bond with reasonable security thereon covering each employee who handles funds entrusted to the market administrator;

(5) Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who, within 15 days after the date upon which he is required to perform such acts, has not (a) made reports pursuant to Sec. 904.5 or (b) made payments pursuant to Sec. 904.8;

(6) Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions hereof; and

(7) Pay out of the funds provided by Sec. 904.10, (a) the cost of his bond and of the bonds of such of his employees as handle funds entrusted to the market administrator, (b) his own compensation,

and (c) all other expenses which will necessarily be incurred by him for the maintenance and functioning of his office and the performance of his duties.

(e) **RESPONSIBILITY.** The market administrator, in his capacity as such, shall not be held responsible in any way whatsoever to any handler, or to any other person, for errors in judgment, for mistakes, or for other acts either of commission or omission, except for his own willful misfeasance, malfeasance, or dishonesty.

SEC. 904.3. Classification of milk. (a) **BASIS OF CLASSIFICATION.** All milk received by a handler from producers or produced by him shall be classified in the classes set forth in paragraph (b) of this section in accordance with its utilization by him: *Provided*, subject to paragraph (c) of this section, That if milk, including skim milk, is moved to the plant of another person who distributes milk or manufactures milk products, classification of such milk may be in accordance with its utilization by such second person. Any utilization of milk claimed by a handler shall be subject to verification by the market administrator.

(b) **CLASSES OF UTILIZATION.** The classes of utilization of milk shall be as follows:

(1) Class I milk shall be all milk the utilization of which is not established as Class II milk.

(2) Class II milk shall be all milk the utilization of which is established (i) as being sold, distributed, or disposed of other than as or in milk which contains not less than one-half of 1 percent butterfat and not more than 16 percent butterfat, and other than as chocolate or flavored whole or skim milk; and (ii) as actual plant shrinkage applicable to Class II milk, to be determined by prorating the total plant shrinkage between Class I and Class II milk in proportion to the volume of milk otherwise classified in each class: *Provided*, That the quantity of shrinkage which is classified as Class II milk shall not exceed 2 percent of the milk classified pursuant to (i) of this subparagraph.

(c) **DISPOSITION OF MILK TO OTHER MARKETS.** (1) Milk received by a handler at one of his plants not subject to the provisions hereof from persons reported by him as under contract to have their milk received and paid for as part of his supply for the marketing area, shall be considered as received from producers and classified as Class I milk.

(2) Milk or skim milk disposed of by a handler to any plant not subject to the provisions hereof shall be classified as Class I milk, not to exceed the total quantity of Class I milk, or skim milk, at such plant.

SEC. 904.4 Minimum prices. (a) **CLASS I PRICES TO PRODUCERS.** Each handler shall pay producers, in the manner set forth in Sec. 904.8, for Class I milk delivered by them, not less than the following prices:

(1) \$3.38 per hundredweight during delivery periods prior to April 1, 1942, and thereafter, \$3.01 per hundredweight for such milk delivered from producers' farms to such handler's plant located not more than 40 miles from the State House in Boston: *Provided*, That with respect to Class I milk disposed of under a program approved by the Secretary for the sale or disposition of milk to low-income consumers

including persons on relief, the price shall be \$2.98 per hundredweight during delivery periods prior to April 1, 1942, and thereafter, \$2.61 per hundredweight.

(2) \$3.25 per hundredweight during delivery periods prior to April 1, 1942, and thereafter, \$2.88 per hundredweight, for such milk delivered from producers' farms to such handler's plant located more than 40 miles from the State House in Boston, less an amount per hundredweight (considering 85 pounds to one 40-quart can) equal to the lowest rail tariff, for the transportation in carlots of milk in 40-quart cans, as published in the New England Joint Tariff, M2, including revisions or supplements thereof, for the distance from the railroad shipping point for such handler's plant to such handler's railroad delivery point in the marketing area, or, if the handler has no plant in the marketing area, for the distance to Boston: *Provided*, That with respect to Class I milk disposed of under a program approved by the Secretary for the sale or disposition of milk to low-income consumers, including persons on relief, the price shall be \$2.85 per hundredweight during delivery periods prior to April 1, 1942, and thereafter \$2.48 per hundredweight, less an amount per hundredweight equal to the freight as computed above.

(3) For the purpose of this paragraph, the milk which was sold or distributed during each delivery period by each handler as Class I milk in the marketing area shall be considered to have been, first, that milk which was received from producers' farms at such handler's plant located not more than 40 miles from the State House in Boston; then, that milk which was received pursuant to Sec. 904.6 (b) at such handler's plant located not more than 40 miles from the State House in Boston; and then, that milk which was shipped from the nearest plant located more than 40 miles from the State House in Boston, including milk received at such plant pursuant to Sec. 904.6 (b).

(b) CLASS II PRICES. Each handler shall pay producers, in the manner set forth in Sec. 904.8, for Class II milk delivered by them not less than the following prices per hundredweight:

(1) In the case of such milk delivered to a handler's plant located not more than 40 miles from the State House in Boston, the price calculated pursuant to subparagraph (2) of this paragraph, plus 17 cents.

(2) Except as provided in subparagraph (3) of this paragraph, in the case of milk delivered to a handler's plant located more than 40 miles from the State House in Boston, a price which the market administrator shall calculate as follows: divide by 33.48 the weighted average price per 40-quart can of 40 percent bottling quality cream in the Boston market, as reported by the United States Department of Agriculture for the delivery period during which such milk is delivered, or the last such price reported for a delivery period if no such price is reported for the delivery period during which such milk is delivered, multiply the result by 3.7 and subtract 29 cents: *Provided*, That any plus amount for skim value shall be added which results from the average of the two following computations: (a) compute the average of all hot-roller process dry skim milk quotations, "other brands, human consumption, barrels, car lots," and for "other brands, animal feed, carlots, bags or barrels" (using midpoint of any range as one quotation), published during such delivery period in The Pro-

ducers' Price-Current, subtract $4\frac{1}{4}$ cents, multiply by 7; and (b) compute the average of all quotations (using midpoint of any range as one quotation), published during the delivery period in the Oil, Paint, and Drug Reporter, for domestic 20-30 mesh casein in bags in carlots at New York, subtract 6.6 cents and multiply by 2.2: *Provided further*, That if either computation results in a minus amount, the other shall be used in lieu of the average.

(3) During the May, June, and September delivery periods, in the case of such milk, other than route returns, made into butter at a handler's own plant more than 40 miles from the State House in Boston, the minimum price shall be computed by the market administrator, instead of the price otherwise applicable pursuant to this paragraph, as follows: from the average of the highest prices reported daily during such delivery period by the United States Department of Agriculture for 92-score butter at wholesale in the New York market, deduct 5 cents, add $16\frac{2}{3}$ percent and multiply by 3.7: *Provided*, That any plus amount shall be added which results from the skim value as computed in subparagraph (2) of this paragraph, less 15 cents.

(c) **SALES OUTSIDE THE MARKETING AREA.** The price to be paid to producers in the manner set forth in Sec. 904.8, by each handler for milk utilized as Class I milk outside the marketing area shall be:

(1) Except as provided in subparagraph (2) of this paragraph, the applicable price pursuant to paragraph (a) of this section, adjusted by (i) the difference between \$3.50, for the periods prior to April 1, 1942, and thereafter \$3.13, and the price ascertained by the market administrator as the prevailing price paid by processors for milk of equivalent use in the market where such Class I milk is utilized, and (ii) the difference between the freight allowance, if any, set forth in paragraph (a) (2) of this section and an amount equal to the lowest rail tariff for the transportation in carlots of milk in 40-quart cans, as published in the New England Joint Tariff, M2, including revisions or supplements thereof, for the distance from the railroad shipping point for the plant where such Class I milk is received from producers to the railroad delivery point serving the market where such Class I milk is utilized: *Provided*, That if the market where such Class I milk is utilized is less than 10 miles from the plant where such Class I milk is received from producers, or if such plant is located not more than 40 miles from the State House in Boston, the railroad shipping point for such plant shall be presumed to be the railroad delivery point serving such market: *And provided further*, That in no event shall the adjusted price be less than the applicable Class II price set forth in (b) (1) and (2) of this section.

(2) For Class I milk sold or distributed in milk marketing areas numbers 10A, 10D, 13A, 14A, 15A, 16A, 16B, and 17, as defined by official orders of the Milk Control Board of the Commonwealth of Massachusetts, in effect on May 1, 1941, the prices applicable pursuant to paragraph (a) of this section.

(d) **PUBLICATION OF CLASS II PRICES.** On or before the 5th day after the end of each delivery period, the market administrator shall publicly announce the Class II price in effect for such delivery period.

SEC. 904.5. Reports of handlers. (a) **PERIODIC REPORTS.** On or before the 8th day after the end of each delivery period, each handler who receives milk from producers shall, with respect to milk or cream

which was received or produced by such handler during such delivery period, report to the market administrator in the detail and form prescribed by the market administrator, as follows:

(1) The receipts at each plant from producers, including the quantity, if any, produced by such handler.

(2) The receipts at each plant from any other handler, including any handler who is also a producer.

(3) Receipts at each plant pursuant to Sec. 904.6 (b).

(4) The respective quantities of milk which were sold, distributed or used, including sales to other handlers, for the purpose of classification pursuant to Sec. 904.3.

(b) **REPORTS OF HANDLERS WHO RECEIVE NO MILK FROM PRODUCERS.** Handlers who receive no milk from producers shall make reports to the market administrator at such time and in such manner as the market administrator may require.

(c) **REPORTS AS TO PRODUCERS.** Each handler shall report to the market administrator:

(1) Within 10 days after the market administrator's request with respect to any producer for whom such information is not in the files of the market administrator, and with respect to a period or periods of time designated by the market administrator: (a) the name, post office address, and farm location, (b) the total pounds of milk delivered, (c) the average butterfat test of milk delivered, and (d) the number of days upon which the deliveries were made;

(2) Within 10 days after any producer begins or resumes milk deliveries: (a) the name, post office address, and farm location of such producer, (b) the date upon which such producer began or resumed milk deliveries, (c) the plant at which such producer delivered milk, and (d) the plant, if known, at which such producer delivered milk immediately prior to the beginning of delivery to such handler;

(3) Within 5 days after any producer has failed to make deliveries for 5 consecutive days: (a) the name, post office address, and farm location of such producer, (b) the date upon which milk was last received, (c) the plant at which such producer delivered milk, and (d) the reason, if known, for such failure to deliver;

(4) Within 10 days after any producer moves from one farm to another: (a) the name, post office address, and location of the respective farms operated by such producer, and (b) the date upon which milk was first received from the new location; and

(5) On or before the 8th day after the end of each delivery period each handler shall report the names of any persons whose milk he is reporting pursuant to Secs. 904.3 (c) and 904.6 (b) and include a certification that these persons have contracts as specified therein.

(d) **REPORTS OF PAYMENTS TO PRODUCERS.** Each handler shall submit to the market administrator, within 10 days after his request made not earlier than 20 days after the end of the delivery period, his producer pay roll for such delivery period, which shall show for each producer: (a) the daily and total pounds of milk delivered with the average butterfat test thereof and (b) the net amount of such handler's payments to such producer with the prices, deductions, and charges involved.

(e) **OUTSIDE CREAM PURCHASES.** Each handler shall report, as requested by the market administrator, his purchases, if any, of bottling

quality cream from handlers who receive no milk from producers, showing the quantity and the source of each such purchase and the cost thereof, at Boston.

(f) **VERIFICATION OF REPORTS.** In order that the market administrator may submit verified reports to the Secretary pursuant to Sec. 904.2 (d) (3), each handler shall permit the market administrator or his agent, during the usual hours of business to (a) verify the information contained in reports submitted in accordance with this section and (b) weigh, sample, and test milk for butterfat.

SEC. 904.6 Application of provisions. (a) **HANDLERS WHO RECEIVE NO MILK FROM PRODUCERS.** The provisions hereof, except as set forth in Sec. 904.5, shall not apply to a producer-handler nor to a handler whose sole source of milk supply consists of receipts from other handlers.

(b) **PRODUCERS FOR OTHER MARKETS.** Milk received from producers who are reported by a handler as under contract to have their milk received and paid for as part of that handler's supply for a market other than the marketing area, shall be reported under a separate category, and the provisions of Sec. 904.8 and Sec. 904.9 shall not apply except that such handler shall make payment as provided for in Sec. 904.8 (h).

(c) **MILK RECEIVED FROM PRODUCERS WHO ARE ALSO HANDLERS.** Milk of a handler's own production which is delivered in bulk to another handler shall be considered as being delivered by a producer unless the receiving handler is a producer-handler.

(d) **HANDLERS WITH LESS THAN 10 PERCENT OF TOTAL RECEIPTS AS CLASS I IN THE MARKETING AREA.** In the case of a handler, not including a cooperative association, as qualified pursuant to Sec. 904.9 (a), who sells or distributes as Class I milk in the marketing area less than 10 percent of his total receipts of milk, the provisions hereof shall not apply except as follows:

(1) The handler shall, with respect to his total receipts and utilization of milk, make reports to the market administrator at such time, and in such manner, as the market administrator may require, and allow verification of such reports by the market administrator.

(2) The handler shall, with respect to that quantity of milk received from producers and actually sold or distributed as Class I milk in the marketing area, make payments as provided for in Sec. 904.8 (g) and Sec. 904.10.

(e) **MILK SUBJECT TO THE NEW YORK ORDER.** The provisions hereof shall not apply to the handling of milk received at any handler's plant which is subject to the provisions of the order regulating the handling of milk in the New York metropolitan marketing area (Order No. 27), issued by the Secretary effective as of September 1, 1938, as amended, or of any order superseding or amending such orders.

SEC. 904.7 Determination of uniform prices to producers. (a) **COMPUTATION OF VALUE OF MILK FOR EACH HANDLER.** For each delivery period the market administrator shall compute, subject to the provisions of Sec. 904.6, the value of milk sold, distributed, or used by each handler, which was not received from other handlers, or pursuant to Sec. 904.6 (b), in the following manner:

(1) Multiply the quantity of milk in each class by the price applicable pursuant to paragraphs (a), (b), and (c), of Sec. 904.4; and

(2) Add together the resulting value of each class.

(b) **COMPUTATION AND ANNOUNCEMENT OF UNIFORM PRICES.** The market administrator shall compute and announce the uniform prices per hundredweight of milk delivered during each delivery period in the following manner:

(1) Combine into one total the respective values of milk, computed pursuant to paragraph (a) of this section, for each handler from whom the market administrator has received at his office, prior to the 11th day after the end of such delivery period, the report for such delivery period and the payments required by Sec. 904.8 (b) (3) and (g) and (h) for milk received during each delivery period since the effective date of the most recent amendment hereof;

(2) Add the total amount of payments required from handlers pursuant to Sec. 904.8 (g) and (h);

(3) Add the total net amount of the differentials applicable pursuant to Sec. 904.8 (e);

(4) Subtract the total amount to be paid to producers pursuant to Sec. 904.8 (b) (2);

(5) Subtract the total of payments required to be made for such delivery period pursuant to Sec. 904.9 (b);

(6) Divide by the total quantity of milk which is included in these computations except that milk required to be paid for pursuant to Sec. 904.8 (b) (2), the quantity of milk included in the computation pursuant to Sec. 904.8 (g), and the quantity of milk received pursuant to Sec. 904.6 (b);

(7) Subtract not less than 4 cents nor more than 5 cents for the purpose of retaining a cash balance in connection with the payments set forth in Sec. 904.8 (b) (3);

(8) Add an amount which will prorate, pursuant to paragraph (c) of this section, any cash balance available; and

(9) On the 12th day after the end of each delivery period, mail to all handlers and publicly announce (a) such of these computations as do not disclose information confidential pursuant to the act, (b) the blended price per hundredweight which is the result of these computations, (c) the names of the handlers whose milk is included in the computations, and (d) the Class II price.

(c) **PRORATION OF CASH BALANCE.** For each delivery period the market administrator shall prorate, by an appropriate addition pursuant to paragraph (b) of this section, the cash balance, if any, in his hands from payments made by handlers for milk received during any delivery period to meet obligations arising out of Sec. 904.8 (b) (3).

SEC. 904.8. Payments for milk. (a) **ADVANCE PAYMENTS.** On or before the 10th day after the end of each delivery period, each handler shall make payment to producers for the approximate value of milk received during the first 15 days of such delivery period. In no event shall such advance payment be at a rate less than the Class II price for such delivery period.

(b) **FINAL PAYMENTS.** On or before the 25th day after the end of each delivery period, each handler shall make payment, subject to the butterfat differential set forth in paragraph (d) of this section, for the total value of milk received during such delivery period as required to be computed pursuant to Sec. 904.7 (a), as follows:

(1) To each producer, except as set forth in subparagraph (2) of this paragraph at not less than the blended price per hundredweight, computed pursuant to Sec. 904.7 (b), subject to the differentials set forth in paragraph (e) of this section, for the quantity of milk delivered by such producer;

(2) To any producer, who did not regularly sell milk for a period of 30 days prior to February 9, 1936, to a handler or to persons within the marketing area, at not less than the Class II price in effect for the plant at which such producer delivered milk, except that during the May, June, and September delivery periods the price pursuant to Sec. 904.4 (b) (3) shall apply, for all the milk delivered by such producer during the period beginning with the first regular delivery of such producer and continuing until the end of 2 full calendar months following the first day of the next succeeding calendar month; and

(3) To producers, through the market administrator, by paying to, on or before the 23d day after the end of each delivery period, or receiving from the market administrator on or before the 25th day after the end of each delivery period, as the case may be, the amount by which the payments required to be made pursuant to subparagraphs (1) and (2) of this paragraph are less than or exceed the value of milk as required to be computed for such handler pursuant to Sec. 904.7 (a), as shown in a statement rendered by the market administrator on or before the 20th day after the end of such delivery period.

(c) **ADJUSTMENTS OF ERROR IN PAYMENTS.** Whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments pursuant to paragraph (b) (3) of this section, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment to any producer for milk delivered to any handler discloses payment to such producer of a less amount than is required by this section, the handler shall make up such payment to the producer not later than the time of making final payment for the period in which such error is disclosed.

(d) **BUTTERFAT DIFFERENTIAL.** If any producer has delivered to any handler during any delivery period milk having an average butterfat content other than 3.7 percent, such handler shall, in making the payments to such producer prescribed by subparagraphs (1) and (2) of paragraph (b) of this section, add for each one-tenth of 1 percent of average butterfat content above 3.7 percent or deduct for each one-tenth of 1 percent of average butterfat content below 3.7 percent an amount per hundredweight which shall be calculated by the market administrator as follows: Divide by 33.48 the weighted average price per 40-quart can of 40 percent bottling quality cream in the Boston market, as reported by the United States Department of Agriculture

for the period between the 16th day of the preceding month and the 15th day inclusive of the delivery period during which such milk is delivered, or the last such price reported for a delivery period if no such price is reported for the period between the 16th day of the preceding month and the 15th day inclusive of the delivery period during which such milk is delivered, subtract 1.5 cents and divide the result by 10.

(e) **LOCATION DIFFERENTIALS.** The payments to be made to producers by handlers pursuant to paragraph (b) (1) of this section, shall be subject to differentials as follows:

(1) With respect to milk delivered by a producer to a handler's plant located more than 40 miles from the State House in Boston, there shall be deducted an amount per hundredweight (considering 85 pounds to one 40-quart can) equal to the lowest rail tariff, for the transportation in carlots of milk in 40-quart cans, as published in the New England Joint Tariff, M2, including revisions or supplements thereof, for the distance from the railroad shipping point for such handler's plant to Boston.

(2) With respect to milk delivered by a producer to a handler's plant located not more than 40 miles from the State House in Boston, there shall be added 13 cents per hundredweight.

(3) With respect to milk delivered by a producer, whose farm is located more than 40 miles but not more than 80 miles from the State House in Boston, there shall be added 23 cents per hundredweight, unless such addition gives a result greater than \$3.38 prior to April 1, 1942, and thereafter \$3.01, in which event there shall be added an amount which will give as a result such price.

(4) With respect to milk delivered by a producer, whose farm is located not more than 40 miles from the State House in Boston or whose farm is located in Barnstable or Plymouth Counties, Massachusetts, there shall be added 46 cents per hundredweight, unless such addition gives a result greater than \$3.38 prior to April 1, 1942, and thereafter \$3.01, in which event there shall be added an amount which will give as a result such price.

(f) **OTHER DIFFERENTIALS.** In making the payments to producers set forth in subparagraphs (1) and (2) of paragraph (b) of this section, handlers may make deductions as follows:

(1) With respect to milk delivered by producers to a handler's plant which is located outside the marketing area and more than 14 miles but not more than 40 miles from the State House in Boston, an amount equal to 10 cents per hundredweight of Class I milk actually sold or distributed in the marketing area from such plant, such total amount to be deducted pro rata on all milk delivered by such producers.

(2) With respect to milk delivered by producers to any handler's plant from which the average daily shipment of Class I milk during any delivery period is: (a) less than 17,000 but greater than 8,500 pounds, an aggregate amount, prorated among producers delivering milk to such plant, equal to the difference between the freight to the plant in the marketing area where the milk is first received at the lowest carload rate in 40-quart cans and the freight at the rate for shipments of 100 40-quart cans on the Class I milk shipped during such delivery period and (b) less than 8,500 pounds an ag-

gregate amount, prorated among producers delivering milk to such plant equal to the difference between the freight to the plant in the marketing area where the milk is first received at the lowest carload rate in 40-quart cans and the freight at the less-than-carload rate in 40-quart cans in milk cars on the Class I milk shipped during such delivery period.

(g) **PAYMENTS BY HANDLERS WITH LESS THAN 10 PERCENT OF TOTAL RECEIPTS AS CLASS I IN THE MARKETING AREA.** Handlers subject to Sec. 904.6 (d) shall pay to producers through the market administrator, on or before the 23d day after the end of the delivery period, the value determined by multiplying the quantity of Class I milk disposed of in the marketing area by the difference between the prices applicable pursuant to Sec. 904.4 (a) and the prices applicable pursuant to subparagraphs (1) and (2) of Sec. 904.4 (b).

(h) **PAYMENTS FOR MILK RECEIVED FROM PRODUCERS FOR OTHER MARKETS.** On or before the 23d day after the end of each delivery period, handlers who received milk pursuant to Sec. 904.6 (b) shall pay to producers through the market administrator the value determined by multiplying the quantities of such milk in each class by the prices applicable pursuant to Sec. 904.4 and subtracting the value of such milk at the Class II prices in effect for the plants at which such milk is received.

(i) **STATEMENTS TO PRODUCERS.** In making the payments to producers prescribed by subparagraphs (1) and (2) of paragraph (b) of this section, each handler shall furnish each producer with a supporting statement, in such form that it may be retained by the producer, which shall show:

(1) The delivery period, and the identity of the handler and of the producer;

(2) The total pounds and average butterfat test of milk delivered by the producer;

(3) The minimum rate or rates at which payment to the producer is required under the provisions of paragraphs (b), (d), and (e) of this section;

(4) The rate for such milk delivered from the producer's farm to the handler's plant, which is used in making the payment if other than the applicable minimum rate;

(5) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deductions claimed under Sec. 904.8 (f) and Sec. 904.9 together with a description of the respective deductions; and

(6) The net amount of payment to the producer.

SEC. 904.9 Payments to cooperative associations. (a) **ELIGIBILITY OF COOPERATIVE ASSOCIATIONS.** Upon application to the Secretary, any cooperative association duly organized under the laws of any State which he determines, after appropriate inquiry or investigation, to be conforming to the provisions of such laws and of the Capper-Volstead Act, as amended, as to character of organization, voting requirements, dividend payments, dealing in products of non-members; to be operating as a responsible producer-controlled marketing association exercising full authority in the sale of the milk of its members; to be systematically checking the weights and tests of milk delivered by its members to plants other than those which

may be operated by itself; to guarantee payments to its producers; to be maintaining, either individually or in collaboration with other qualified cooperative associations, a competent staff for dealing with marketing problems and providing information to its members with whom close working relationships are constantly maintained; to be collaborating with other similar associations in activities incident to the maintenance and strengthening of collective bargaining by producers and the operation of a plant of uniform pricing of milk to handlers; and to be complying with all provisions of this order applicable to such cooperative association, shall be entitled to receive payments in the amount and under the conditions herein specified from the date of qualification, as fixed by the Secretary, until it has been found by the Secretary after notice and opportunity for a hearing, that it has failed to continue to meet any condition or to maintain and exercise the authority or to perform any of the functions required by this section for the receipt or use of such payments.

(1) Any such cooperative association shall receive an amount computed at not more than the rate of $11\frac{1}{2}$ cents per hundredweight of milk marketed by it on behalf of its members in conformity with the provision of this order, the value of which is determined pursuant to Sec. 904.7 (a), and with respect to which a handler has made payments as required by Sec. 904.8 (b) (3) and Sec. 904.10: *Provided*, That the amount paid shall not exceed the amount which handlers are obligated to deduct from payments to members under subsection (c) hereof and are not used in paying patronage dividends or other payments to members with respect to milk delivered except in fulfilling the guarantee of payments to producers; and that in cases where two or more associations participate in the marketing of the same milk, payment under this paragraph shall be available only to the association which the individual producer has made his exclusive agent in the marketing of such milk.

(2) Any such cooperative association shall receive an amount computed at the rate of 5 cents per hundredweight on Class I milk received from producers at a plant operated under the exclusive control of member producers, which is sold to proprietary handlers. This amount shall not be received on milk sold to stores, to handlers, in which the cooperative has any ownership, or to a handler with which the cooperative has such sales arrangements that its milk not sold as Class I milk to such handler is not available for sale as Class I milk to other handlers.

(b) **PAYMENT TO QUALIFIED COOPERATIVE ASSOCIATIONS.** The market administrator shall, upon claim submitted in form as prescribed by him, make payments authorized under paragraph (a), or issue credit therefor out of the cash balance credited pursuant to Sec. 904.7 (b) (5), on or before the 25th day after the end of each delivery period, subject to verification of the receipts and other items on which the amount of such payment is based.

(c) **REPORTS.** Each cooperative association qualified to receive payments pursuant to this section shall, from time to time, as requested by the market administrator, make reports to him with respect to the use of such payments and the performance of any service or function set forth as the basis for such payment, and shall file with him a copy of its balance sheet and operating statement at the close of each fiscal year.

(d) **SUSPENSION.** The market administrator shall suspend payments upon request by the Secretary or such officer of the Department of Agriculture as he may designate, or upon his own initiative, by giving written notice to such association whenever there is reason to believe that a beneficiary of such payments is no longer qualified. Such suspended payments shall be segregated and held in reserve until the Secretary has, after notice and opportunity for a hearing, ruled upon the performance of the cooperative and either ordered the suspended payment to be paid to it in whole or in part, or disqualified such cooperative, in which event the balance of payments held in reserve shall be added to the cash balance, if any, in his hands pursuant to Sec. 904.8 (b) (3).

(e) **AUTHORIZED MEMBER DEDUCTIONS.** In the case of producers whose milk is received at a plant not operated by a cooperative association of which such producers are members and which is receiving payments pursuant to this section, each handler shall make such deductions from the payments to be made to such producers pursuant to Sec. 904.8 as may be authorized by such producers and, on or before the 25th day after the end of each delivery period, pay over such deductions to the association in whose favor such authorizations were made.

SEC. 904.10 Expense of administration. (a) **PAYMENTS BY HANDLERS.** As his prorata share of the expense of the administration hereof, each handler, except as set forth in Sec. 904.6 (a), shall, on or before the 23d day after the end of each delivery period, pay to the market administrator a sum not exceeding 2 cents per hundred-weight with respect to all milk actually delivered to him during such delivery period by producers or produced by him; the exact sum to be determined by the market administrator subject to review by the Secretary: *Provided*, That each handler, which is a cooperative association of producers, shall pay such prorata share of expense of administration only on that milk actually received from producers at a plant of such association, and each handler subject to Sec. 904.6 (d) shall pay such prorata share of expense of administration only on that quantity of milk actually sold or distributed in the marketing area as Class I.

(b) **SUITS BY MARKET ADMINISTRATOR.** The market administrator may maintain a suit in his own name against any handler for the collection of such handler's prorata share of expense set forth in this section.

SEC. 904.11 Effective time, suspension, or termination. (a) **EFFECTIVE TIME.** The provisions hereof, or any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended, or terminated, pursuant to paragraph (b) of this section.

(b) **SUSPENSION OR TERMINATION.** The Secretary may suspend or terminate this order or any provision hereof whenever he finds that this order or any provision hereof obstructs or does not tend to effectuate the declared policy of the act. This order shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

(c) **CONTINUING POWER AND DUTY OF THE MARKET ADMINISTRATOR.** If, upon the suspension or termination of any or all provisions hereof,

there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided*, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

(1) The market administrator, or such other person as the Secretary may designate, shall (a) continue in such capacity until removed by the Secretary, (b) from time to time account for all receipts and disbursements, and when so directed by the Secretary deliver all funds on hand, together with the books and records of the market administrator or such person, to such person as the Secretary shall direct, and (c) if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant thereto.

(d) **LIQUIDATION AFTER SUSPENSION OR TERMINATION.** Upon the suspension or termination of any or all provisions hereof the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions hereof, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

IN WITNESS WHEREOF, I, CLAUDE R. WICKARD, Secretary of Agriculture of the United States, have executed in duplicate and issued this order, as amended, and have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed hereto in the city of Washington, District of Columbia, this 28th day of July 1941. I hereby order that sections 904.4 (a) and (c) of this order, as amended, shall become effective at 12:01 a. m., e. d. s. t., August 1, 1941, and that the remaining sections and provisions of this order, as amended, shall become effective at 12:01 a. m., e. d. s. t., August 1, 1941.

[SEAL]

CLAUDE R. WICKARD,
Secretary of Agriculture.

{fol. 66] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA

No. 8343

DELBERT O. STARK, et al., Appellants,

vs.

CLAUDE R. WICKARD, Secretary of Agriculture &c., Appellee

MINUTE ENTRY—March 3, 1943

Argument commenced by Mr. Harry Polikoff, attorney for appellants, continued by Mr. John S. L. Yost, attorney for appellee, and concluded by Mr. Harry Polikoff.

[fol. 67] IN UNITED STATES COURT OF APPEALS FOR THE DIS-
TRICT OF COLUMBIA

No. 8343

DELBERT O. STARK, et al., Appellants,

v.

CLAUDE R. WICKARD, Secretary of Agriculture of the United
States

Appeal from the District Court of the United States for the
District of Columbia

Decided June 14, 1943

Mr. Harry Polikoff, with whom *Mr. Walter J. Brobyn* was on the brief, for appellants.

Mr. John S. L. Yost, Special Assistant to the Attorney General, with whom *Miss Margaret H. Brass*, Special Attorney, Department of Justice, was on the brief, for appellee.

Mr. Charles W. Wilson filed a brief as *amicus curiae* on behalf of the New England Milk Producers' Association, urging affirmance.

Before Parker, Circuit Judge, sitting by designation, and
Miller and Vinson, Associate Justices

OPINION

MILLER, *Associate Justice*:

Under the Agricultural Marketing Agreement Act of 1937,¹ the Secretary of Agriculture issued an amended order,² Number 4, effective August 1, 1941, regulating the handling of milk in the Greater Boston marketing area. That order is the subject of dispute in this case. Section 904.7 of the Order requires the market administrator—who was appointed by the Secretary, pursuant to the Act—to compute the value of milk sold, distributed, or used, by each handler of milk who is subject thereto, in accordance with the formula therein-prescribed, and to announce uniform prices per hundredweight of milk delivered during each delivery period. Section 904.4 of the Order establishes minimum prices for milk and requires handlers to pay to producers not less than those prices. Section 904.9 of the Order requires the market administrator to make certain payments³ to cooperative associations of producers, which the Secretary may determine to be qualified to receive them, in accordance with the provisions of the Order.⁴

¹ 50 Stat. 246, § 8c, 7 U. S. C. A. § 608c.

² 7 CFR 904-904.0; 6 Fed. Reg. 3762.

³ § 904.9 (b) "Payment to Qualified Cooperative Associations. The market administrator shall, upon claim submitted in form as prescribed by him, make payments authorized under paragraph (a), or issue credit therefor out of the cash balance credited pursuant to Sec. 904.7 (b) (5), on or before the 25th day after the end of each delivery period, subject to verification of the receipts and other items on which the amount is based."

⁴ § 904.9 (a) "Eligibility of Cooperative Associations. Upon application to the Secretary, any cooperative association duly organized under the laws of any State which he determines, after appropriate inquiry or investigation, to be conforming to the provisions of such laws and of the Capper-Volstead Act, as amended, as to character of organization, voting requirements; divided payments, dealing in products of non-members; to be operating as a responsible

[fol. 68] Appellants, who were plaintiffs in the District Court, are producers of milk who sell to handlers in the Greater Boston area. These handlers, in turn, are subject to Order No. 4. Appellants are not members of a cooperative association; and many of them voted against adoption of Order No. 4, as amended, when it was submitted to a producers' referendum. In their complaint appellants challenged the action of the Secretary in issuing Order No. 4. They contend that he was without legal authority to incorporate therein Sections 904.9 (a)-(d) and 904.7 (b) (5); that these sections are unlawful and void; and, particularly, that the Secretary is without legal authority to make any qualifications of any cooperative association, as eligible for the payments specified in the disputed sections of Order No. 4, or to certify any such association for that purpose. They sought an injunction to restrain him from qualifying, or certifying the qualification of, any cooperative association of producers. They sought, also, a judgment declaring the provisions of Section 904.9 (a)-(d) and of Section 904.7 (b) (5) to be unauthorized, illegal and void. The trial

producer-controlled marketing association exercising full authority in the sale of the milk of its members; to be systematically checking the weights and tests of milk delivered by its members to plants other than those which may be operated by itself; to guarantee payments to its producers; to be maintaining, either individually or in collaboration with other qualified cooperative associations, a competent staff for dealing with marketing problems and providing information to its members with whom close working relationships are constantly maintained; to be collaborating with other similar associations in activities incident to the maintenance and strengthening of collective bargaining by producers and the operation of a plan of uniform pricing of milk to handlers; and to be complying with all provisions of this order applicable to such cooperative association, shall be entitled to receive payments in the amount and under the conditions herein specified from the date of qualification, as fixed by the Secretary, until it has been found by the Secretary after notice and opportunity for a hearing, that it has failed to continue to meet any condition or to maintain and exercise the authority or to perform any of the functions required by this section for the receipt or use of such payments."

judge, relying upon the decision of this court in *Wallace v. Ganley*,⁵ decided that appellants were without standing to challenge the validity of the Order; he held that appellants' complaint failed to state a claim upon which relief could be granted, and dismissed the complaint. This appeal followed. The only question which we need decide is whether appellants have standing to seek review of the Secretary's Order. We conclude that they have not.

The Supreme Court has classified the rights which may be the subject of vindication by an action such as the present: "• • • a legal right,—one of property, one arising out of contract, one protected against tortious invasion, or one founded on a statute which confers a privilege."⁶ Appellants do not specify, exactly, either in their complaint or in their brief, which, of the four rights, they claim theirs to be. In paragraph three of the complaint they allege that they produce milk and sell it to handlers. Without more, this would identify their rights as arising out of contract; [fol. 69] and make applicable to them the language of *Wallace v. Ganley*:⁷ "The only legal rights of the appellees which appear in these cases arise under their contracts with the handlers or distributors of milk • • • The only violation of rights which could be suffered or threatened would be by breach of contract. But in neither case do the appellees allege that a breach of contract has taken place; nor that the Dairies, who are—with them—parties to their several contracts, have threatened a breach of contract; nor that the threatened enforcement of the act and order by the Secretary will cause the Dairies to break their contracts; nor that the Dairies have notified them that as a result of the act and order the Dairies will pay them less than is provided by their contracts; nor even that the Dairies have

⁵ 68 App. D. C. 235; 95 F. (2d) 364.

⁶ *Tennessee Power Co. v. T. V. A.*, 306 U. S. 118, 137-138, citing *In re Ayers*, 123 U. S. 443; *Walla Walla v. Walla Walla Water Co.*, 172 U. S. 1; *American School of Magnetic Healing v. McAnnulty*, 187 U. S. 94; *ex parte Young*, 209 U. S. 123; *Scully v. Bird*, 209 U. S. 481; *Philadelphia Co. v. Stimson*, 223 U. S. 605; *Lane v. Watts*, 234 U. S. 525; *Truax v. Raich*, 239 U. S. 33; *Lipke v. Lederer*, 259 U. S. 557.

⁷ *Wallace v. Ganley*, 68 App. D. C. 235, 237, 95 F. (2d) 364, 366.

notified them that they intend to comply with the order, much less that as a result they will not carry out the terms of their contracts."

But, appellants contend, they are not in exactly the same position as the producers in the *Wallace* case. There the constitutionality of the Act was challenged. Hence, as the producers placed no reliance upon the Act, they could claim none of its benefits. Consequently, the only rights which could have been reflected by their complaint arose, of necessity, from their contracts. In the present case, appellants assume the validity of the Act, and claim rights arising from it, namely, rights to receive the minimum prices therein provided for. Proceeding upon this assumption, they contend, first, that the formula prescribed by the Secretary, in his order for determining minimum prices, was improper; and, second, that they, as beneficiaries under the Act, are empowered to challenge that order by means of the proceeding which they initiated in the present case. Presumably, therefore, appellants are assuming a right "founded on a statute which confers a privilege."⁸

Coming, then, to an examination of this assumption, and conceding its validity, solely for the purpose of argument, it will be noted that Congress made no provision in the Agricultural Marketing Agreement Act for review, upon the petition of milk producers, even in the capacity of "private Attorney Generals,"⁹ or as "King's proctors," to vindicate the public interest;¹⁰ as it has done in some of its enactments during recent years.¹¹ Appellants recognize this fact

⁸ *Tennessee Power Co. v. T. V. A.*, 306 U. S. 118, 137-138.

⁹ *Associated Industries of New York State v. Ickes*, 2 Cir., 134 F. (2d) 694.

¹⁰ See *Edgerton; J.*, concurring in *Colorado Radio Corp. v. Federal Communications Comm'n.* 118 F. (2d) 24, 28.

¹¹ See, generally, Mr. Justice Douglas, dissenting in *Federal Communications Commission v. National Broadcasting Company*, U. S. , , decided May 17, 1943, 11 U. S. L. W. 4385, 4391; *Federal Communications Commission v. Sanders Radio Station*, 309 U. S. 470, 477; *Scripps-Howard Radio, Inc. v. Federal Communications Comm'n.*, 316 U. S. 4, 14-15; *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261, 268-269; *Federal Trade Comm. v. Klesner*, 280 U. S. 19, 27; *Virginia Ry. v. Federation*, 300 U. S. 515, 552.

and contend, as a consequence, that the only means which they have of asserting their rights is by a complaint for injunction, as they have done in the present case. They argue that "the equalization pool" belongs to the producers, because it is derived from the sale of milk which they produce; hence, that "they must have standing to protect their own property"; that the handlers have no financial interest [fol. 70] in the fund, and that the government has no proprietary or possessory rights therein. They conclude that "appellee's agent is definitely in the position of an official trustee diverting a fund away from the statutory purpose for which the monies involved should have been paid," namely, to them, as the producers to whom they contend it belongs; hence, that "the producers who own the fund can enjoin its dissipation." Appellants emphasize, also, the injury which, they say, will result to them, unless the relief sought is granted. But it is not sufficient to show lack of remedy or injury, in order to challenge administrative action, when vindication is sought of rights founded on a statute which confers a privilege, but fails to give a right of review.¹² The doctrine, which has been worked out by the Supreme Court in a series of recent decisions, was summarized by Judge Frank, speaking for the Second Circuit, in the *Associated Industries* case:¹³ "In a suit in a federal court by a citizen against a government officer, complaining of alleged past or threatened future unlawful conduct by the defendant, there is no justiciable 'controversy,' without which, under Article III, § 2 of the Constitution, the court has no jurisdiction, unless the citizen shows that such conduct or threatened conduct invades or will invade a private substantive legally protected interest of the plaintiff citizen; such invaded interest must be either of a 'recognized' character, at 'common law' or a substantive private legally protected interest created by statute. In other words, unless the citizen first shows that, if the defendant were a private person having no official status, the particular defendant's conduct or threatened conduct would give rise to a cause of action against him by that particular citizen, the court cannot consider whether the defendant officer's con-

¹² Perkins v. Lukens Steel Co., 310 U. S. 113, 125.

¹³ *Associated Industries of New York State v. Ickes*, 2 Cir., 134 F. (2d) 694, 700. And see authorities there cited.

duct is or is not authorized by statute; for the statute comes into the case, if at all, only by way of a defense or of justification for acts of the defendant which would be unlawful as against the plaintiff unless the defendant had official authority, conferred upon him by the statute, to do those acts. Unless, then, the citizen first shows that some substantive private legally protected interest possessed by him has been invaded or is threatened with invasion by the defendant officer thus regarded as a private person, the suit must fail for want of a justiciable controversy, it being then merely a request for a forbidden advisory opinion. That the plaintiff shows financial loss on his part resulting from unlawful official conduct is not alone sufficient, for such a loss, absent any such invasion of the plaintiff's private substantive legally protected interest, is *damnum absque injuria*. Thus, for instance, financial loss resulting from increased lawful competition with a plaintiff, made possible solely by the defendant official's unlawful action, is insufficient to create a justiciable controversy. More is required, 'than a common concern for obedience to law.' "

*United States v. Rock Royal Co-operative, Inc.*¹⁴ and *Thompson v. Deal*,¹⁵ upon which appellants rely, do not support their contention. There is no reason to impress a trust [fol. 71] upon the fund here involved. Appellants are not in any real sense the equitable owners of the fund. The only right which they have with respect to it is that which they may assert against the handlers, under their contracts for sale and purchase of milk. In all other respects, their standing to sue is no different, and no greater, than is that of citizens generally.¹⁶ True it is that the Agricultural Marketing Agreement Act was passed for the benefit of milk producers; but it was also passed for the benefit of milk consumers, handlers, and the public, generally. The fact that one person or group of persons may benefit, or were intended to benefit from its operation, does not confer upon them, without more, the power or privilege of directing the law's administration. Here, unlike the *Thompson*

¹⁴ 307 U. S. 533.

¹⁵ 67 App. D. C. 327, 92 F. (2d) 478.

¹⁶ See *Perkins v. Lukens Steel Co.*, 310 U. S. 113, 125, 129; *Stearns v. Wood*, 236 U. S. 75, 78; *Fairchild v. Hughes*, 258 U. S. 126, 129-130.

case,¹⁷ the suit is one in which the court is asked to interfere with the official discretion of a government officer.

We conclude that the decision of the District Court was correct.

Affirmed.

Mr. Justice Vinson sat during the argument of this case; concurred in the result when it was considered in conference, but resigned from the Court before the opinion was prepared.

[fol. 72] IN UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA, APRIL TERM, 1943

No. 8343

DELBERT O. STARK, et al., Appellants,

vs.

CLAUDE R. WICKARD, Secretary of Agriculture of the United
States, Appellee

Appeal from the District Court of the United States for the
District of Columbia

JUDGMENT—Filed June 14, 1943

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

Per Mr. Justice Miller.

Dated June 14, 1943.

Mr. Justice Vinson sat during the argument of this case; concurred in the result when it was considered in conference, but resigned from the Court before the opinion was prepared.

¹⁷ 67 App. D. C. 327, 332; 92 F. (2d) 478, 483.

[fol. 73]

[File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA

[Title omitted]

DESIGNATION OF RECORD—Filed July 27, 1943

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above-entitled cause, and include therein the following:

1. Appendix to appellants' brief.
2. Minute entry of argument.
3. Opinion.
4. Judgment.
5. This designation.
6. Clerk's certificate.

Harry Polikoff, Attorney for Appellants.

Service

I certify that a copy of the above designation was mailed to John S. L. Yost, Special Assistant to the Attorney General, attorney for appellee, Department of Justice, Washington, D. C., this 25th day of July, 1943.

Harry Polikoff.

[fol. 74] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 75] IN THE SUPREME COURT OF THE UNITED STATES

STIPULATION AS TO RECORD

Subject to the approval of this Court, it is hereby stipulated and agreed by and between the attorneys for the respective parties hereto, that, for the purpose of the petition for a writ of certiorari, the printed record may consist of the following:

1. The appendix to brief for appellants, including Order No. 4, as amended, filed in the United States Court of Appeals for the District of Columbia.

2. The proceedings in the United States Court of Appeals for the District of Columbia.

It is further stipulated and agreed that the petitioners will cause the Clerk of the United States Court of Appeals for the District of Columbia to certify and file the entire transcript of the record now on file in his office with the Clerk of this Court, and that in the event the petition for a writ of certiorari is granted, the printed record shall consist of the proceedings in the United States Court of Appeals for the District of Columbia and such portions of the entire transcript of the record certified by the Clerk of that Court as the respective parties may designate.

[fols. 76-77] It is further stipulated and agreed that either party may refer in the petition and briefs to any portions of the certified typewritten transcript of record which are not included in the printed record to be filed in accordance with this stipulation.

Charles Fahy, Solicitor General of the United States;
Harry Polikoff, Attorney for Petitioners.

Dated this 27th day of July, 1943.

[fol. 78] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 11, 1943

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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FILED

JUL 29 1943

CHARLES LEWIS GROFLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1943

No. **211**

**DELBERT O. STARK, A. F. STRATTON, A. R. DENTON,
G. STEBBINS and F. WALSH,**

Petitioners,

v.

**CLAUDE R. WICKARD, Secretary of Agriculture of
the United States,**

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA**

✓
HARRY POLIKOFF,
Counsel for Petitioners.

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IN THE

Supreme Court of the United States

OCTOBER TERM 1943

DELBERT O. STARK, A. F. STRATTON, A. R.
DENTON, G. STEBBINS and E. WALSH,
Petitioners,

v.

CLAUDE R. WICKARD, Secretary of Agri-
culture of the United States,
Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA**

*To the Honorable the Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

The petitioners herein respectfully pray that a writ of certiorari issue to review the order of the United States Court of Appeals for the District of Columbia entered in the case of Delbert O. Stark et al. v. Claude R. Wickard, Secretary of Agriculture of the United States, No. 8343, under date of June 14, 1943.

Opinions Below

The opinion of the United States Court of Appeals for the District of Columbia, per Miller, Associate Justice, June 14, 1943, is not yet reported. This opinion affirms the decision of the United States District Court for the

District of Columbia, per Adkins, District Judge, delivered May 27, 1942, from the bench and unreported (appearing in the record below, Appellants' Appendix, p. 24), dismissing the complaint.

Jurisdiction

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code as amended; 28 U. S. C. A., Sec. 347(a).

Questions Presented

1. Did the court below err in holding that no legally protected rights of milk producers are violated by the Secretary of Agriculture, who, purporting to act under the Agricultural Marketing Agreement Act of 1937, makes unauthorized disbursements from the Producer Settlement Fund created for such producers pursuant to said Act and prevents producers from receiving the lawful minimum price under the Act as provided in their contracts with milk handlers?

2. Does the Agricultural Marketing Agreement Act of 1937 authorize the Secretary of Agriculture to make payments out of the Producer Settlement Fund to certain cooperative corporations, as provided in Sec. 904.9 of Order No. 4 as amended?

Statute Involved

The statute involved herein is the Agricultural Marketing Agreement Act of 1937; Act of June 3, 1937, 50 Stat. 246, Sec. 8c, 7 U. S. C. A., Sec. 608c. The official compilation of this statute is attached to the Appendix for Appellants below.

Statement

This action was commenced by five dairy farmers (petitioners) resident in the northern New England milkshed, whose milk is marketed in the Boston area. The respondent is the Secretary of Agriculture, who issued Order No. 4 as amended (7 F. Reg. IX, Sec. 904.0) under the Agricultural Marketing Agreement Act of 1937 (generally referred to hereinafter as "the Act of 1937") (Act of June 3, 1937; 50 Stat. 246; 7 U. S. C. A., Sec. 601 et seq.) regulating the handling of milk in the greater Boston market and the prices to be paid by handlers for milk purchased from petitioners and other producers. A copy of Order No. 4 as amended (generally referred to as "the Order") appears as Exhibit A of the complaint (see Appendix below).

A feature of Order No. 4 as amended is the "equalization pool" or "Producer Settlement Fund". Handlers are required by the Act to pay for their milk at minimum prices according to whether it is used for distribution as fluid milk (Class I) or in manufactured dairy products (Class II); the Class I price is substantially higher than the Class II price (and reflects the higher resale value of fluid milk per unit). A uniform or blended price is returned by all handlers to all producers without regard to the use to which their milk is devoted by each handler. Such blended or average price is computed each month by dividing the total value of Class I milk and Class II milk sold by all the handlers by the total volume of both classes of milk. Payment into the equalization pool or Producer Settlement Fund is made by handlers for producers in all cases where the handler's obligation to producers for milk at the minimum price of the class used by him is greater than such blended price. Distribution of a uniform price to all producers by handlers is then made through the pool or fund as operated by a Market Administrator, agent of the Secretary respondent:

The complaint avers that, effective August 1, 1941, an amendment to Order No. 4 provided that a deduction (of $1\frac{1}{2}$ to 5 cents per cwt. of milk) be made from the pool and in computing the blended price, and further provided that the funds thus subtracted should be paid by the Market Administrator to any cooperative association engaged in certain marketing activities and which the Secretary of Agriculture certified as qualified within certain requirements set forth in Sec. 904.9 of the Order. It is also averred that by the expenditure and deduction from the Producer Settlement Fund for these payments, the Secretary has caused the petitioners to be paid a price for their milk below the minimum which they are required to be paid under the Act, causing a loss of \$60,000 annually to them and other producers in their class.

The petitioner producers are not members of any cooperative. On their own behalf and on behalf of others similarly situated, they allege that these payments are unauthorized by the Act, and pray that the Secretary of Agriculture be enjoined from qualifying or certifying any cooperatives therefor or, to the extent that any have been so qualified, that he revoke such qualification.

The case first arose in the United States District Court for the District of Columbia upon motion for a temporary injunction, which was denied by Jesse C. Adkins, J. Thereafter the Government moved for summary judgment under Rule 56 (F. R. C. P.), which motion was denied by Daniel W. O'Donoghue, J., who directed an answer on the merits. The answer included as the first defense that the complaint failed to state a cause of action. The plaintiffs (petitioners here) filed a motion for preliminary hearing upon the first defense, under Rule 12(d) (F. R. C. P.); after argument thereon, judgment was entered by Jesse C. Adkins, J., dismissing the complaint. From such judgment, appeal was taken to the court below.

Reasons for Granting the Writ

1. The case involves substantial federal questions of general importance.

(a) Under the Agricultural Marketing Agreement Act of 1937, the Secretary of Agriculture presently has in effect 13 orders regulating the handling of milk in 13 marketing areas supplied by approximately 103,215 dairy farmers or milk producers, which orders authorize Producer Settlement Funds (equalization pools) for milk sold and valued in the aggregate at \$279,459,645.93 during 1942. The decision below immediately affects adversely all such milk producers, holding that they have no legal or equitable interest in the Producer Settlement Fund, paid by handlers for the milk purchased by them directly from such producers.

It has been settled that handlers have no interest in the Producer Settlement Fund (*United States v. Rock Royal Co-operative, Inc.*, 307 U. S. 533), and it has never been contended that the Government has any proprietary right or ownership therein; hence, the instant case involves whether the Agricultural Marketing Agreement Act of 1937 destroys all rights of property, particularly the rights of the above milk producers, in the specific proceeds of nearly 11 billion pounds of milk produced and sold by them in many of the most important cities of the nation, placing vast sums subject to the possession of agents of the Secretary of Agriculture but beyond protection by any person seeking judicial restraint or redress against diversion thereof to unlawful purposes.

The general importance of this case is to be judged not only by the above markets immediately affected thereby, but also by the many additional markets which are now or in the future may be regulated under the Act of 1937, and in which the Secretary has the authority to establish a Producer Settlement Fund. Furthermore, at least 20 states

have statutes regulating prices in the milk industry, some of which authorize (*Milk Control Board v. Crescent Creamery, Inc.*, 14 N. E. [2d] 588 [Ind.], app. dis'd 59 Sup. Ct. 87) similar producer settlement funds. Therefore, the case is of general importance to the entire dairy industry of the United States, and directly so to over 2,000,000 dairy farmers who by the decision below are or may be deprived of all property interest in the specific proceeds of their own milk sold and delivered by them.

(b) Having decided that the petitioners have no standing to complain, the court below refrained from deciding whether the Act of 1937 authorizes the Secretary to make payments out of the Producer Settlement Fund to certain private cooperative corporations, for alleged services rather than for milk sold. In two of the largest milk markets the Secretary has already directed and caused payments to be made out of the Producer Settlement Fund to such private corporations: in the Greater Boston Milk Marketing Area, involved in the instant case, such payments totalled \$177,523.60 during 1942; in the New York Metropolitan Milk Marketing Area, \$1,087,608.18. However, there is no statutory limit on the amount, manner or purpose of such payments; therefore, the importance of this question rests in the fact that if the authority exists, or if the decision of the court below stands, vast millions of dollars paid by handlers for milk sold and delivered by producers become subject to disbursement in any amount to private corporations, at the expense of such producers (whether or not they are members or stockholders of such corporations).¹ To the extent that the Producer Settlement Fund in each market is depleted by such payments, the dairy farmers of the nation must remain unpaid for the milk which they have produced, sold and delivered.

¹ Although producers are entitled to express approval or disapproval of a marketing order under Sec. 8c(9)(B) of the Act of 1937, it is significant that a cooperative corporation is permitted to vote in lieu of its members under Sec. 8c(12) thereof.

2. The questions involved have not been, but should be, decided by this Court.

(a) The constitutionality of the equalization provision of the Act of 1937, Sec. 8c(5)(B)(ii), was sustained by this Court in *United States v. Rock Royal Co-operative, Inc.*, 307 U. S. 533, and *H. P. Hood & Sons v. United States*, 307 U. S. 588. In the former case, defendant handlers attempted to attack the authority of the Secretary to effectuate Order No. 27, Art. VII, Sec. 5, directing payments to co-operative associations of the New York area. This Court held that "Whether cooperative or not, the defendant corporations have no financial interest in the producer settlement fund" (at 561) because "only producers are affected by the use of the pooled money" (at 560; see also 561). Thus, this Court has strongly indicated that producers have an interest in the Fund, but did not decide the point because producers were not parties to the action.

(b) No federal court other than that below will have jurisdiction to rule upon the questions involved: due to the necessity of securing jurisdiction over the Secretary of Agriculture, a producer must proceed in the District of Columbia. The Secretary having no authority under the Act to sue milk producers, and producers having no authority to petition for administrative review, they have no method of testing the issue by way of defense or otherwise in any other jurisdiction. Because the statute involved regulates an essential industry, national in importance and in territorial extent (cf. *Muncie Gear Works, Inc. v. Outboard Marine & Mfg. Co.*, 315 U. S. 759), it is submitted that the law of the land should be pronounced by this Court.

3. The court below has not given proper effect to applicable decisions of this Court.

(a) The court below aptly quoted the principle stated by this Court in *Tennessee Power Co. v. Tennessee Valley Authority*, 306 U. S. 118, at 137-138, that plaintiffs must establish "a legal right—one of property, one arising out

of contract, one protected against tortious invasion, or one founded on a statute which confers a privilege". But the court thereafter misconceived of the petitioners' "rights to receive the minimum prices" in their contracts with handlers without unlawful interference by the Secretary, and of petitioners' claim to "standing to protect their own property" interest as equitable owners of the Producer Settlement Fund, as "assuming a right 'founded on a statute which confers a privilege'". Hence, the court below improperly applied the foregoing case, *Perkins v. Lukens Steel Co.*, 310 U. S. 113, and other cases below noted; the court also failed to give effect to applicable decisions of this Court herein discussed.

This Court has held that a person—purporting to act as an official—who interferes with performance of a contract of employment invades a legally protected interest and may be enjoined by the party discharged from such employment, *Truax v. Raich*, 239 U. S. 33, or by both parties, *Adkins v. Children's Hospital*, 261 U. S. 525. It has also been held that a person—purporting to act as an official—who interferes with performance of a contract for purchase and sale of lodging and schooling through causing cancellation by one party thereto, invades a legally protected interest of the other party and may be enjoined; *Pierce v. Society of Sisters*, 268 U. S. 510. This Court also has held that a person—purporting to act as an official—who interferes with performance of a contract for the purchase and sale of syrup by preventing one party from retaining possession of the goods delivered thereunder invades a legally protected interest of the other and may be enjoined by him; *Scully v. Bird*, 209 U. S. 481, 489. The instant case is similar: the respondent—purporting to act as an official—has interfered with performance of a contract for the purchase and sale of milk by preventing one party from fully paying the other therefor (by unlawfully diverting part of the proceeds to certain corporations); in so doing he has invaded a legally protected interest of the other and may be enjoined by him.

The court below, in stating that the petitioners' "only right with respect to it (the Fund) is that which they may assert against the handlers, under their contracts", failed to apply the above decisions; it overlooked that rights under a contract are indeed contract rights between the parties thereto, but are "*private legally protected property rights as to third persons*", which rights will be protected against interference or invasion by third parties, whether private persons or officials acting beyond their authority. This Court has held: "Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property"; *Coppage v. Kansas*, 236 U. S. 1, at 14; *Adkins v. Children's Hospital*, 261 U. S. 525. That the right to make a contract includes the right to receive performance thereunder is implicit in each of the five cases last cited.² Obviously, the petitioners' "rights to receive the minimum prices" under their contracts should not be deemed as "founded on a statute which confers a privilege": the *privilege* and benefit of a minimum price fixed by law are vastly different from the contract *right* to receive payment for milk sold, albeit payment can only be made at the legal minimum. Petitioners herein, instead of attacking the benefit of the legal minimum (*Wallace v. Ganley*, 95 F. [2d] 364, relied upon below), seek to protect their right to be paid for their milk; certainly this fundamental right has not been destroyed by a law which merely forbids the making of a contract at less than a minimum price.

The decisions of this Court most heavily relied upon³ below are clearly inapplicable, because there the complain-

² Although these cases involve state legislation, the protection for such right is similar under both the Fifth and the Fourteenth Amendments: *Curry v. McCannless*, 307 U. S. 357, at 369-370; *Crowell v. Benson*, 285 U. S. 22, at 42.

³ The *Tennessee Power* and *Lukens Steel* cases were cited or quoted twice below; but since each was relied upon twice again in the passage quoted below from *Associated Industries of New York State v. Ickes*, 131 F. (2d) 694, 700/ it may be said that each case was applied four times below to the instant case. Interestingly, of the nine other decisions cited in the opinion below in Footnote 6 but not discussed, the plaintiffs in eight were held to have standing to sue.

ants had no rights to protect from the alleged interference: *Tennessee Power Co. v. Tennessee Valley Authority*, 306 U. S. 118, at 139, held that the plaintiff's "local franchises, while having elements of property, confer no contractual or property right to be free of competition". *Perkins v. Lukens Steel Co.*, 310 U. S. 113, held that the plaintiffs possessed no right to bid for Government contracts free from compliance with wage determinations made by the Secretary of Labor pursuant to a statute regulating procedure by the Government as a proprietor, "keeping its own house in order" (at 127) in the procurement of its supplies.

(b) The petitioners have and aver (Complaint, Par. 3, Appellants' Appendix, p. 4, below) "contracts (with handlers) for sale and purchase of milk", as found by the court below. As acknowledged by the Government (Appellee's Brief, p. 16, below), it is immaterial whether such contracts are written or oral, express or implied. It is a contract for the sale of milk in which, other evidence and averments absent, there can be but one price: the price prescribed by law; and this, of course, means the price lawfully prescribed. As petitioners aver (Complaint, Par. 14, Appellants' Appendix, p. 9) they should "be paid in accordance with the provisions of said Agricultural Marketing Agreement Act of 1937" and "are entitled to be paid the blended price computed without deduction for such unlawful payments" to private cooperative associations. Since "the minimum price is paid to the producers through the payment of the uniform price" or blended price (*United States v. Rock Royal Co-operative, Inc.*, 307 U. S. 533, at 562), it is immaterial (as the respondent conceded below, Appellee's Brief, p. 16) whether the contracts herein be considered as requiring payment of a lawful minimum class price or a lawful uniform or blended price. The contract must be at the lawful price, because by statute it could not lawfully be for less; and in the absence of agreement thereon it could not be for more.⁴

⁴ Cf. Maximum Price Regulation, No. 329, effective February 16, 1944, issued under the Emergency Price Control Act of 1942; Act of Jan. 30, 1942; 56 Stat. 23; 50 U. S. C. A. App., Sec. 901.

(c) Since the petitioners admittedly had the right and did contract to sell milk at the lawful price, it follows that the respondent Secretary, in ordering handlers under duress of imprisonment (Sec. 8c(14)) to pay his agent the monies constituting part of such price by certifying that certain corporations should be paid such monies, has interfered with the petitioners' right to receive lawful performance of their contracts. The handlers actually have paid out a sum equal to the lawful price, but the petitioner producers have not received it in full because part was diverted to third persons upon order of the respondent Secretary. Handlers cannot complain against such order: *United States v. Rock Royal Co-operative, Inc.*, 307 U. S. 533, at 572. Producers cannot recover against handlers in any contract action, because the latter are merely discharging their obligations under an order which they have no standing to question: part of the price has been taken away by the respondent Secretary due to handlers' "submitting to this order because they had no power to resist it", as in *McLemore v. Louisiana State Bank*, 91 U. S. 27. If the rule were otherwise, handlers would be in the remarkable position of having to pay twice—once to producers under the contract and once to the Secretary's co-operative corporations under the unlawful order. Thus, the Secretary has interfered with lawful performance of these contracts for the sale of milk: if he decreed that payment shall be made for producers' milk by the handler's using half of the price to subsidize or build a private milk plant (or a post office) without authority, his interference would be no more effective and he certainly could not escape attack merely because the contract price was prohibited by law from falling below a prescribed minimum. In so appropriating part of the price he is no less above challenge than when he appropriates part of the milk, as in *Scully v. Bird*, 204 U. S. 481, *supra*.

A contract for the sale of milk at the lawful minimum price, though the minimum be a benefit to producers, re-

mains a contract with every right except such as Congress saw fit to modify or regulate in the public interest.⁵ Congress, by failing to authorize producers to petition for administrative review, certainly did not show intention to destroy the property rights which producers hold in their contracts for the sale of milk as against unlawful interference by third persons, whether private persons or persons purporting to act officially but exceeding authority. Yet this is the holding of the court below; and "to take away all remedy for the enforcement of a right is to take away the right itself": *Poindexter v. Greenhow*, 114 U. S. 270, at 302.

(d) When the respondent Secretary unlawfully compels handlers to turn over to his agent part of the monies which should comprise payments to producers for milk, by certifying without authority that certain corporations are instead entitled to part of the lawful minimum classification price, the monies thus in the hands of the Secretary through his agent should be impressed with a trust in the petitioners' favor. Here again, the issue is one of property right—an equitable ownership in property—rather than of statutory privilege. Where a fund held by a public officer is a trust by statute or a trust ex maleficio, an action by the beneficiary may lie against him as against a private person to protect the fund from dissipation: *Mellon v. Orinoco Iron Co.*, 266 U. S. 121; *Z. & F. Assets Corp. v. Hull, et al.*, 311 U. S. 470; *Osborn v. Bank of United States*, 22 U. S. 738, at 836; see *Thompson v. Deal*, 92 F. (2d) 478, similarly involving a producer pool. This Court sustained the constitutionality of the Producer Set-

⁵ In *Ickes v. Fox*, 300 U. S. 82, beneficiaries contracting under the Reclamation Act and supplementary legislation had standing to restrain enforcement of an order purporting issued thereunder, wrongfully limiting their water rights; in *Sante Fe Pacific R. R. Co. v. Lane, Secretary*, 244 U. S. 492, the beneficiary of a land grant had standing to protest against an unlawful charge by the grantor government for surveying it. These cases do not involve benefits in the sense of pure donations or gifts; neither does the instant case, wherein producers must give valuable consideration by supplying milk in order to obtain any price benefit. See also citations below, note 7.

tlement Fund in *United States v. Rock Royal Co-operative, Inc.*, 307 U. S. 533, upon representation by the Government that such fund belonged to producers: its brief then urged that the Fund is "a pool created by all producers" (p. 27); that the Fund is "money which represents a part of the value of the milk delivered by producers" (p. 28); that the Fund "is money which should be distributed among the producers. * * * When it is paid they (the handlers) are deprived of nothing. They have merely served as a conduit for its distribution among producers" (p. 125); that "cooperative payments * * * are paid out of monies due to producers" (p. 157). Order No. 4 itself⁶ shows ownership of the Fund in producers. The petitioners' equitable interest in the Fund gives them standing to protect it; citations *supra*.

Producers do not lose this standing merely because they may benefit from the Fund; by hypothesis, every trust has a beneficiary.⁷ The view below that producers' "standing to sue is no different, and no greater, than is that of citizens generally" is a view closed to the reality that the milk which created the Fund and the monies which comprise it came from the producers alone.⁸

This Court sustained the Producer Settlement Fund under the Fifth Amendment as created by Congressional action "reasonably adapted to allow regulation of the interstate market": *United States v. Rock Royal Co-opera-*

⁶ Sec. 904.11(d), that any funds collected by the administrator "above the amounts necessary" (and it is safe to assume that this means "lawfully necessary") "shall be distributed to the contributing handlers and producers in an equitable manner." Sec. 904.8(b)(3) of the Order requires handlers to pay for milk "to producers, through the market administrator * * *" who therefore clearly is a mere conduit for producers.

⁷ In *Dayton-Goose Creek Ry. v. United States*, 263 U. S. 456, it was strongly indicated that shippers (rather than carriers) had standing to complain respecting the Recapture Fund, although obviously beneficiaries of the railroad rate orders creating it. See also cases *supra*, note 5. In any event, the benefit (under the Act and order) of which the validity is not questioned is "clearly separable from the sections here challenged"; *Thompson v. Consolidated Gas Co.*, 300 U. S. 55, at 81.

⁸ The Fund is not part of the general funds of the United States; cf. *Massachusetts v. Mellon*, 262 U. S. 417; but see *Raymond v. Chicago Union Traction Company*, 207 U. S. 20.

live, Inc., 307 U. S. 533, at 572. It follows that if, as alleged, the Secretary's unlawful deductions cause the Fund to acquire monies wrongfully certified for payment to private corporations without Congressional authority, such Fund is *not* the kind sustained earlier by this Court; it is a creature of the Secretary instead of Congress. In short, by accumulating monies in the Producer Settlement Fund without statutory authority for payment to private interests, which monies are otherwise payable to producers⁹ under lawful provisions of Order No. 4, the Secretary is (a) lawfully interfering with performance of producers' contracts; (b) coming into possession¹⁰ through a Producer Settlement Fund of monies due to producers thereunder; (c) administering a fund which lacks constitutional or statutory authority, and which petitioner producers as rightful owners have standing to protect.

(e) Granted standing to sue, petitioners will readily establish that the Secretary acted beyond his authority in Sec. 904.9(a)-(d) and Sec. 904.7(b)(5) of Order No. 4 as

⁹ A greatly simplified but accurate description of the Fund in operation and of producers' injury under the challenged provision is as follows:

If a handler buys from producers exactly 100 lbs. of milk exclusively for use in Class I, with a minimum class price of \$3.40—and if another handler similarly buys Class II milk at \$2.20—the Act requires the blended price to be computed in such manner that it amounts to \$2.80; the first handler is obligated to pay all producers \$3.40 by paying his own producers \$2.80 and by paying 60 cents to the Market Administrator for the Producer Settlement Fund thus created.

However, if—by making some illegal or unauthorized deduction—the Secretary computes the blended price 1 cent lower than he should under the Act, producers dealing with such handler would receive only \$2.79. Therefore the fact of injury is simple, precise and direct, producers receiving a lower price. Furthermore, such handler still remains subject, under the Act and Order, to pay the minimum price of \$3.40; so the balance of 61 cents (60 + 1) is paid into the Fund. Assuming that the other handler's producers also sold 100 lbs. of milk, and adding this to the above 100 lbs., other producers could only be paid 59 cents instead of 60 from the Fund because 2 cents (1 cent per 100 lbs.) so obtained are paid out as the co-operative payments here under attack. Again the fact of injury is simple, precise and direct, producers receiving a lower price, due to the Fund acquiring part of their price.

As succinctly stated in the *Rock Royal Case*, at 561, "if the deductions from the fund are small or nothing, the patron [producer] receives a higher uniform price"; thus, the injury to the petitioners varies directly with the amount of the deduction herein.

¹⁰ See above, note 9.

amended, directing payments out of the Producer Settlement Fund to cooperative corporations therein described. The Government throughout this case has failed to meet the issue upon its merits. The Act prohibits such payments: Sec. 8c(5)(E) states that milk marketing orders may provide for deductions from payments to producers for market information, weighing, sampling and testing (activities in Sec. 904.9 of the Order) "except as to producers for whom such services are being rendered by a cooperative marketing association." When Congress was asked to adopt a measure to cure the Secretary's lack of authority to make these payments, the bill was not enacted: Bill S. 3426, 76th Cong., 3rd Sess. (1940). *Carey v. Donohue*, 240 U. S. 430, at 437; *Federal Trade Commission v. Bunte Bros.*, 312 U. S. 349, at 352.

It is a vast departure from the American scheme of government, to tax or charge non-members in order to finance operations by private corporations (cooperative or proprietary); hence the intention of Congress to do so will not lightly be implied: *Reinecke v. Gardner*, 277 U. S. 239; *Thompson v. Consolidated Gas Co.*, 300 U. S. 55, at 80; *Burr Creamery Corp. v. Commissioner*, 62 F. (2d) 407, cert. den. 289 U. S. 730. With clarity, Congress has here provided for special treatment of cooperative producer associations in numerous other respects, and such differentiation from other types of business organization (not differentiation from individual producers) has been sustained in *United States v. Rock Royal Co-operative, Inc.*, 307 U. S. 533, at 563; but the very fact of such special expressions by Congress compels the conclusion that failure to grant express authority for the payments herein means intent not to authorize them, there being no general grant of power to the Secretary to pay monies to cooperatives: *Springer v. Philippine Islands*, 277 U. S. 189. Furthermore, the *Rock Royal* case sustained differentiation by Congress, rather than by administrative order.

The legislative history of the Act also defies all efforts to read into any section thereof a scintilla of Congressional intent to authorize the payments involved in this case or to prescribe any standards therefor in purpose or amount.

WHEREFORE, your petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Court of Appeals for the District of Columbia, requiring that court to certify the whole record and the case herein to this Court for review and determination.

DELBERT O. STARK, A. F. STRATTON,
A. R. DENTON, GEORGE STEBBINS
FRANCIS WALSH,

Petitioners

By HARRY POLIKOFF,
Counsel for Petitioners

120 Broadway
New York, N. Y.

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CHARLES ELMORE CROPLEY
CLERK

No. 211

In the Supreme Court of the United States

OCTOBER TERM, 1943

**DELBERT O. STARK, A. F. STRATTON, A. R.
DENTON, G. STEBBINS AND F. WALSH,**
Petitioners

v.

**CLAUDE R. WICKARD, SECRETARY OF
AGRICULTURE OF THE UNITED STATES**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA.**

**MOTION OF THE PETITIONERS TO JOIN MARVIN JONES,
WAR FOOD ADMINISTRATOR, AS A PARTY
RESPONDENT.**

H. BRIAN HOLLAND,
Counsel for Petitioners

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WAR FOOD ADMINISTRATOR, AS A PARTY
RESPONDENT.**

Now come the petitioners, Delbert O. Stark, A. F. Stratton, A. R. Denton, G. Stebbins and F. Walsh, and move that Marvin Jones, War Food Administrator, be joined as party respondent in the above-entitled cause.

The petitioners say there is substantial need for joining said Marvin Jones, War Food Administrator, as party respondent with Claude R. Wickard, Secretary of Agriculture of the United States, for the following reasons: The petitioners' complaint, filed in the District Court for the District of Columbia, sought to enjoin the respondent, Claude R. Wickard, Secretary of Agriculture, from certifying the qualification of any cooperative association of producers to receive payments under Section 904.9 of

Order Number 4, as amended, regulating the handling of milk in the Greater Boston Marketing Area and praying that the Court declare Sections 904.9 (a) to (d) and 904.7 (b) (5) of said Order illegal and void. Executive Order 9334, dated April 19, 1943, filed April 23, 1943, consolidated the Food Production Administration, the Food Distribution Administration, the Commodity Credit Corporation and the Extension Service, together with all their powers, functions and duties, into a War Food Administration, within the Department of Agriculture, to be administered under the direction and supervision of a War Food Administrator, to be appointed by the President and to be directly responsible to him. Executive Order 9334 further provided, in Section 4 thereof, that "In addition to the powers and authority granted by this Order, and in order to carry out its purposes, the Secretary of Agriculture and the War Food Administrator, to the extent necessary to enable them to perform their respective duties and functions, shall each have authority to exercise any and all of the powers vested in the other by statute or otherwise." As a consequence of said Executive Order 9334, it appears that the power to qualify or certify the qualification of any cooperative association of producers for payments under Order Number 4, as amended, regulating the handling of milk in the Greater Boston Marketing Area, may now be exercised in the manner described in the petitioners' complaint by Marvin Jones, War Food Administrator, appointed by the President, as well as by the Secretary of Agriculture. The petitioners are informed and believe and therefore aver that, in fact, Marvin Jones, War Food Administrator, intends to exercise the concurrent powers granted him by Executive Order 9334. As a consequence, the relief prayed for in the petitioners' complaint against the Secretary of Agriculture is also required against the War Food Administrator, due to circumstances which the petitioners could not foresee when said complaint was filed.

In order that the petitioners secure adequate relief in the premises, and that all interested parties be before this Honorable Court, the petitioners respectfully move this Honorable Court to join as party respondent the War Food Administrator, Marvin Jones.

DELBERT O. STARK, A. F. STRATTON,
A. R. DENTON, G. STEBBINS AND
F. WALSH,

Petitioners

By H. BRIAN HOLLAND

Counsel for Petitioners

50 Federal Street
Boston, Massachusetts

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BRIEF FOR THE PETITIONERS,
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H. BRIAN HOLLAND
EDWARD B. HANIFY
WILSON C. PIPER
HARRY POLIKOFF.
Counsel for Petitioners

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No. 211

IN THE
Supreme Court of the United States
OCTOBER TERM 1943

DELBERT O. STARK, A. F. STRATTON, A. R. DENTON,
G. STEBBINS AND F. WALSH,
Petitioners,

v.

CLAUDE R. WICKARD, SECRETARY OF AGRICULTURE
OF THE UNITED STATES,
AND
MARVIN JONES, WAR FOOD ADMINISTRATOR
OF THE UNITED STATES,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE DISTRICT OF COLUMBIA.

BRIEF FOR THE PETITIONERS,
DELBERT O. STARK, A. F. STRATTON,
A. R. DENTON, G. STEBBINS and F. WALSH.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia (R. 66) is reported in 136 F. (2d) 786. This opinion affirms the decision of the United States District Court for the District of Columbia, per Adkins, District Judge, which is unreported (R. 24), dismissing the complaint.

JURISDICTION

The judgment of the court below was entered on June 14, 1943 (R. 73). The petition for a writ of certiorari was filed on July 29, 1943, and was granted on October 11, 1943. The jurisdiction of this Court rests on Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U.S.C. Sec. 347).

STATUTE AND ORDER INVOLVED

The Statute involved is the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246; 7 USC Sec. 601 *et seq.*) which re-enacts and amends some of the provisions of the Agricultural Adjustment Act of 1933 (48 Stat. 31), as amended by Act of August 24, 1935 (49 Stat. 750). It is set out in Appendix A, *infra*.

The order involved is Order No. 4, as amended by the order of the Secretary of Agriculture, dated July 28, 1941, effective August 1, 1941 (7 C.F.R. Chap. IX, Sec. 904; 6 Fed. Reg. 3762). A compilation of the Order incorporating the amendments is printed (R. pp. 51-65).

QUESTION PRESENTED

Whether milk producers have standing to maintain an action to enjoin the Secretary of Agriculture and War Food Administrator from qualifying or certifying cooperative associations for cer-

tain payments out of the equalization pool established by the Order which are not authorized by the Statute, and which are accomplished by a deduction in computing the uniform or blended price which the producers receive for their milk.

STATEMENT

I. PROCEEDINGS BELOW

On September 22, 1941 the petitioners filed their complaint in the United States District Court for the District Court of Columbia. The allegations of the complaint (R. p. 6) may be summarized as follows:

The plaintiffs are milk producers, citizens of the States of New York, Maine, New Hampshire and Vermont, who sell milk to "handlers" subject to Order No. 4 as amended regulating the handling of milk in the Greater Boston Marketing Area. They are not members of any cooperative association. (Paragraphs 1, 3, 5 of Complaint, R. p. 6, 7). Effective August 1, 1941, certain provisions of an amendment to Order No. 4 regulating the handling of milk in the Greater Boston Marketing Area, Sections 904.7(b)5 and 904.9(a)-(d)) provided that a deduction (of 1-1/2 or 5 cents per cwt. of milk) be made from the equalization pool and in computing the blended price, and further provided that the funds thus subtracted should be paid by the Market Administrator to any cooperative association engaged in certain marketing activities and

which the Secretary of Agriculture certified as qualified within certain requirements set forth in Sec. 904.9 of the Order. (Paragraph 5 of Complaint, R. p. 7). These provisions of the Order were issued by the Secretary of Agriculture without statutory authority and are null and void. (Paragraph 13 of Complaint, R. p. 10). They reduced the blended price for August, 1941 by 1.55 cents per cwt. (Paragraph 12 of Complaint, R. p. 10). By virtue of the deduction from the Producer Settlement Fund for these payments, the Secretary has caused the petitioners to be paid a price for their milk below the minimum to which they are entitled under the Act (Paragraph 7 of Complaint, R. p. 8.) The illegal deductions for the payments to cooperative associations would deprive the plaintiffs and milk producers similarly situated of more than \$60,000 per year (Paragraph 15 of Complaint, R. p. 11).

On their own behalf and on behalf of others similarly situated, the petitioners sought an injunction to restrain the Secretary of Agriculture from qualifying or certifying the qualification of any cooperative association for the payments under the illegal and unauthorized provisions of the Order. In the event that he had so qualified or certified cooperative associations, the petitioners prayed that he be required to withdraw or cancel such qualification or certification. (R. p. 12). The petitioners further sought a judgment declaring the provisions

in question, Sec. 904.9 (a)-(d) and Sec. 904.7 (b) (5) of the Order as amended, to be unauthorized, illegal and void (R. p. 12).

In the District Court the defendant moved for summary judgment under Rule 56 (F.R.C.P.), which motion was denied by Daniel W. O'Donoghue, J., who directed an answer on the merits (R. p. 5). The answer included as the first defense that the complaint failed to state a cause of action against the defendant upon which relief could be granted (R. p. 20). The petitioners filed a motion to dismiss the first defense (R. p. 24). The case came on to be heard in the District Court upon this motion, "all parties having agreed to consider the motion as a preliminary hearing on the first defense contained in the answer" (R. p. 24). After argument on the first defense judgment was entered by Jesse C. Adkins, J. sustaining the first defense and dismissing the complaint (R. p. 24). The trial judge, relying upon the decision of the Court of Appeals for the District of Columbia in *Wallace v. Ganley*, 68 App. D.C. 235, 95 F.(2d) 364, decided that the petitioners were without standing to challenge the validity of the Order (R. p. 27). An appeal followed to the United States Court of Appeals for the District of Columbia (R. p. 25). That Court considered the only question before it to be whether the petitioners "have standing to seek review of the Secretary's Order" (R. p. 69). In an opinion set forth on pages 66-73 of the

Record it concluded that they did not. Neither Court dealt with the merits of the contention that the contested provisions of the Order are unauthorized by statute, illegal and void. In effect they decided that the petitioners had no standing to complain even if the provisions were, as alleged, illegal, void, and without statutory authority. The correctness of this decision is the only issue before this Court. Upon motion by the petitioners, Marvin Jones, War Food Administrator, was joined as party respondent in this Court on November 8, 1943 since, by Executive Order, he is vested with coordinate powers with the Secretary of Agriculture.

II. THE STATUTE INVOLVED.

The permissible terms in an order regulating the handling of milk are set forth in Secs. 8c(5) and 8c(7) of the Agricultural Marketing Agreement Act of 1937 (R. pp. 34, 35, 37 and Appendix A). Such an order must contain one or more of the terms listed in those sections, and no others.

The first term (Sec. 8c(5)(A)) is one classifying milk in accordance with its use and fixing prices, uniform as to all handlers, payable to producers for each classification. Under such a term, the price each farmer received for his milk would be governed by the use to which it was put by the handler (*i.e.*, dealer) who bought it. For example, the farmer whose milk was sold for consumption as

fluid milk would be paid one price and the farmer whose milk was sold as butter would be paid another.

The second term (Sec. 8c(5)(B)(i)) provides that a handler shall pay a uniform price to all producers or associations of producers selling milk to him. Since under an order embodying the first term, the handler would be obligated to pay for his milk at the use class prices, and since he commingles the milk of various producers delivering to him, it is impossible for him to tell the use to which milk purchased from any particular producer is put. Under the second permissible term, therefore, he is required to determine his total financial obligation at the class prices and to divide that figure by the total number of units of milk he has bought. The result is a composite price which he must pay to each producer for each unit of milk delivered to him. The Secretary may not insert this term in an order unless three-fourths of all the producers agree.

The third permissible term (Sec. 8c(5)(B)(ii)) is an alternative to the second. It provides for payment to all producers and associations of producers in the market of uniform prices irrespective of the uses made of their milk by the individual handler to whom they deliver it. The uniform price is subject only to certain specific statutory adjustments. (Sec. 8c(5)(B)(ii)). These adjustments are for customary volume, market and production

differentials, for grade and quality of milk, for locations at which delivery is made. A further adjustment is provided "equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their marketings of milk during a representative period of time".

Standing alone, Sec. 8c(5)(B)(ii) would simply impose upon all handlers the obligation to pay a uniform flat price for all milk delivered to them. If, however, it is used in an order embodying the first permissible term, *i.e.*, the requirements that each handler pay on the basis of his own use of milk, there would be an apparent inconsistency. Handlers would pay on one basis, producers receive on another. The group of dealers whose milk had a use value higher than the amount they would be required to pay at the uniform prices would pay less than the use value of their milk. Others, whose milk had a lower use value would be required to pay more. The fourth term (Sec. 8c(5)(C)), which the Secretary may include, fills the gap by compelling the first group to reimburse the second for the difference between the amounts it had paid to its producers and the full use value of its milk. In the end, therefore, producers would receive uniform prices and each handler would pay out the use value of his milk.

The fifth permissible term (Sec. 8c(5)(D)) authorized the Secretary to require payments to ne

producers entering the market to be made at the lowest class price.

The sixth term (Sec. 8c(5)(E)) deals with a new subject. An order may provide for market information to producers and for sundry other services, except as to producers for whom such services are being rendered by a qualified cooperative marketing association.

The other terms which may be included in milk orders are then described by the Act. The Secretary may include any term prohibiting unfair methods of competition or unfair trade practices (Sec. 8c(7)(A)). He may designate an agency to administer his order (Sec. 8c(7)(C)). Finally, he may include any term incidental to and not inconsistent with the specified terms and necessary to effectuate the other provisions of the Order (Sec. 8c(7)(D)).

The Secretary is forbidden to include any term not listed in the Act (Sec. 8c(5)). Neither may he provide marketing services for members of cooperative associations (Sec. 8c(5)(E)), nor may such an association be prevented from treating the proceeds of its sales in accordance with its contract with its members (Sec. 8c(5)(F)). Furthermore, there may be no regulation of the handling of milk in an area which would limit the marketing in that area of milk products produced elsewhere in the United States (Sec. 8c(5)(G)). Other prohibitions are listed in Secs. 8c(10), (11) and (13).

Having spelled out the prerequisites and contents of milk orders, Sec. 8c of the Act then goes on to deal with the questions which would subsequently arise. Provision is made for the punishment of violations of any order (Sec. 8c(14)) and for administrative review (Sec. 8c(15)). Any handler subject to an order may file a written petition with the Secretary of Agriculture stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom (Sec. 8c(15)(A)). A handler is afforded judicial review of the ruling of the Secretary of Agriculture upon its petition (Sec. 8c(15)(B)). Then, Sec. 8c(16) directs the Secretary to terminate or suspend an order or any provision of an order if he finds that it does not tend to effectuate the policy of the Act or if he finds that more than half the producers are dissatisfied with the order.

Up to this point the Act defines the powers of the Secretary and the limitations thereon in terms of original orders. Sec. 8c(17), however, covers the possibility of amendments by providing that the provisions of Secs. 8c, 8d and 8e applicable to orders shall be applicable to amendments to orders.

III. THE ORDER INVOLVED.

The provisions of the amended Order (R. p. 51-65) set up a comprehensive system of regulation in

the charge of a Market Administrator. Sec. 904.1 defines the Greater Boston cities and towns which are to be the marketing area regulated, defines a handler as any one who engages in the handling of milk which is in the current of interstate commerce or directly burdens or obstructs such commerce and defines a producer as any one who produces milk in conformity with the health regulations applicable to the sale of fluid milk in the marketing area. Sec. 904.2 establishes the office of Market Administrator and prescribes the duties of its incumbent. Then follow the provisions which he is to administer.

Sec. 904.3 classifies milk in accordance with its use by the handler. Roughly, Class I milk is milk sold as whole or flavored milk, and Class II milk is milk sold for any other purpose. This provision for use classification is in accordance with Sec. 8c(5)(A) of the Act.

Sec. 904.4 then provides for so-called "minimum prices" for each class of milk. The price for Class I milk is fixed and a formula is established for fixing the Class II price. These minimum prices "each handler shall pay producers in the manner set forth in Section 904.8". Sec. 904.5 requires reports from handlers of their use of milk for the purpose of classification.

• Sec. 904.7(a) requires the Administrator to compute for each delivery period the value of milk sold, distributed or used by each handler. This is

done by multiplying the amount of milk sold by a handler as Class I milk by the Class I price and the amount sold as Class II by the Class II price, and adding together the resulting value of each class. The uniform price to producers is then computed under the terms of Sec. 904.7(b). Here the Order adopts the principle of a market-wide equalization pool, authorized by Secs. 8c(5)(B)(ii) and 8c(5)(C) of the Act. The Market Administrator computes a composite blended price based on the value of all the milk sold by all handlers in the market. It is in the prescribed computation of this price that there occurs the deduction, not authorized by statute, of which the petitioners complain. Sec. 904.7(b)(5) provides that in the computation of the blended price to producers the Market Administrator shall "subtract the total of payments required to be made for such delivery period pursuant to Sec. 904.9(b)". These payments are the made to so-called qualified cooperative associations.

Sec. 904.8 then provides for payments by handlers for milk. There are prescribed advance payments, final payments, adjustments of errors in payment and various differentials. It is the final payments with which we are here concerned, and these are of three kinds: (1) payments of the blended price computed pursuant to Sec. 904.7(b) to all except new producers, (2) payments of the Class II price to new producers, and (3) payments

"To producers through the market administra-

tor by paying to . . . or receiving from the market administrator . . . , as the case may be, the amount by which the payments required to be made pursuant to subparagraphs (1) and (2) of this paragraph [the preceding two types of payment] are less than or exceed the value of milk as required to be computed for such handler pursuant to Sec. 904.7(a) [the total class value of milk disposed of by each handler].” (Bracketed material and emphasis supplied.)

The language quoted is the heart of the market-wide equalization scheme and sets up the equalization pool. Under Sec. 904.8 each handler is required to pay each regular producer from whom he buys milk the blended price per hundredweight for the quantity of milk delivered by such producer. If the total amount he owes his producers is less than the “value” of his milk at the classified prices, such handler must then pay the difference “To producers, through the market administrator”. This difference is the so-called equalization payment. The fund into which this payment is made has been aptly described by this Court as “the producer settlement fund”. *United States v. Rock Royal Co-operative, Inc.*, 307 U.S. 533. It is from this fund that the cooperatives receive the payments prescribed in Sec. 904.9, which the petitioners claim are not authorized and are forbidden by the Act.

Sec. 904.9 of the Order then prescribes the sums

to be paid to cooperative associations and the conditions these associations must meet to be eligible for them. In brief, a cooperative association which markets the milk of its members is entitled to an amount computed at not more than the rate of $1\frac{1}{2}$ cents per hundred-weight of milk marketed by it on behalf of its members. A cooperative association which receives milk from producers at a plant operated under the exclusive control of member producers is entitled to an amount computed at the rate of 5 cents per hundredweight on Class I milk received from producers at such a plant.

The petitioners challenged no provisions of the Order other than those providing for these payments to cooperatives out of the equalization pool, through the mechanism of the deduction from the blended price.

The practical operation of the payment to cooperatives as it affects the blended price to producers is shown by the Market Administrator's announcement of the blended price, Exhibit B to the bill of complaint (R. pp. 15-20). However, the operation may perhaps be more clearly explained by the following simplified illustration.

Assume that there are only two handlers, A and B, in the market and that the prices fixed by Sec. 904.4 of the Order are \$3.00 for Class I and \$1.50 for Class II milk. If handler A purchased 150,000 cwt. of milk and sold 100,000 cwt. as fluid or Class I milk, and 50,000 cwt. as manufactured or Class II

milk, the Administrator, in accordance with Sec. 904.7(a) of the Order, would compute the value of A's milk from A's reports made under Sec. 904.5 as follows:

Class I 100,000 cwt. x \$3.00 = \$300,000

Class II 50,000 cwt. x \$1.50 = 75,000

\$375,000

If handler B purchased 150,000 cwt. and sold 50,000 cwt. as Class I and 100,000 cwt. as Class II, a similar computation would be made to determine the value of his milk:

Class I 50,000 cwt. x \$3.00 = \$150,000

Class II 100,000 cwt. x \$1.50 = 150,000

Total value for handler B \$300,000

Under Sec. 904.7(b) the Market Administrator then computes the "blended price" as follows: The total value of the milk in the market is computed by combining into one total the value of the milk for each handler (Sec. 904.7(b)(1))

Handler A \$375,000

Handler B 300,000

\$675,000

Then this sum is divided by the total number of hundredweight purchased by A and B, in order to obtain the "blended" price (Sec. 904.7(b)(6))

$\$675,000 \div 300,000 \text{ cwt.} = \2.25

(Calculations involving location and other differentials are omitted. The deduction for cooperative payments is later described).

Under Sec. 904.8(b) (1) both A and B must pay their respective producers the blended price per hundredweight. A will pay 150,000 cwt. x \$2.25 = \$337,500 and B will pay 150,000 cwt. x \$2.25 = \$337,500. It will be noticed that A's payments to his producers will be less than the value assigned to his milk, whereas B's will exceed that value.

	<i>Handler A</i>	<i>Handler B</i>
Total Value	\$375,000	\$300,000
• Producer Payments	337,500	337,500
	<hr/>	<hr/>
	\$37,500	— \$37,500

By virtue of Sec. 904-8(b) (3), handler A is required to pay "producers through the market administrator" the sum of \$37,500. Handler B is entitled to receive \$37,500 from the Market Administrator since that represents the excess of the blended price to his producers over the use value of his milk.

The operation of those provisions of the Order granting to cooperatives payments from the equalization pool may now be described, assuming the same facts as in the foregoing example.

The Market Administrator, in computing the blended price, is required to subtract the total payments required to be made to cooperative associa-

tions (Sec. 904.7(b)(5)) from the value of the milk received by handlers, before he divides that value by the quantity of milk included in his computations.

Assuming that cooperative payments are determined pursuant to Sec. 904.9 of the Order to be \$15,000, the Market Administrator, pursuant to Sec. 904.7(b)(5), subtracts this sum from \$675,000, the total value of the milk of handlers A and B. (See Market Administrator's Announcement, Exhibit B to the Complaint, R. p. 19). Then the resulting sum of \$660,000 is divided by the total number of hundred-weight purchased by A and B to determine the blended price:

$$\$660,000 \div 300,000 \text{ cwt.} = \$2.20$$

The blended price is now reduced from \$2.25 to \$2.20.

Handlers A and B will each pay producers 150,000 cwt. \times \$2.20 = \$330,000. It will again be observed that A's payments to producers will be less than the value assigned to his milk, whereas B's will exceed that value.

	<i>Handler A</i>	<i>Handler B</i>
Total Value	\$375,000	\$300,000
Producer Payments	330,000	330,000
	<hr/>	<hr/>
	\$45,000	— \$30,000

Handler A is still required, under Sec. 904.8(b)(3) to pay "to producers through the market adminis-

trator" \$45,000, the difference between the use value of his milk and his payments to producers at the blended price. And handler B, having paid his producers the reduced blended price, is entitled to receive \$30,000 from the Market Administrator. A's payment into the equalization pool no longer balances B's withdrawal. There is a difference of \$15,000 and this sum, received by the Market Administrator, is paid out to the cooperative associations under Sec. 904.9(b).

The payments to cooperative associations are made from funds received by the Market Administrator from handlers, as "payments to producers" (Sec. 904.8(b)). The reduction in the blended price by the subtraction of these payments to cooperatives in its computation (Sec. 904.7 (b) (5)), places the Market Administrator in funds to make the payments.

SUMMARY OF ARGUMENT

The governing criteria of the petitioners' standing to sue have been set forth by this Court in *Tennessee Power Company v. T. V. A.*, 306 U. S. 118, 137-138. The petitioners must invoke the protection of "a legal right, one of property, one arising out of contract, one protected against tortious invasion, or one founded on a statute which confers a privilege". The statutory scheme of regulation in the present case is modern and unique. Hence, to specify that the right of the petitioners fits *exclu-*

sively or predominantly in some one or more of the categories described by the Court is to undertake classification so refined that it may obscure matters of substance. The ultimate test of the existence of the petitioners' right "is not to be found in an over-refined technique". *Columbia Broadcasting System, Inc. v. United States*, 316 U. S. 407, 425. The substantive right involved here springs from a definite property interest in the producer settlement fund. In another aspect, the right arises out of contract, since it grows out of a purchase and sale of milk. Because the fund involved is of statutory origin and the price of the product is fixed by statute, the right involved may be viewed as founded on a statute which confers a privilege.

At the outset, it is submitted the petitioners and producers similarly situated are directly affected in a pecuniary way by the challenged provisions of the Order. The challenged payments to coöperatives are made from producers' money, through a reduction in the price for their milk. The analysis we have made of the source of the payments to co-operative associations required by Sec. 904.9 of the Order indicates that they are correctly described by the Secretary as "payments out of the equalization pool" (Sec. 904.0 Finding No. 3). The blended price payable to producers is reduced by the amount necessary to make these payments. The funds from which they are paid come into the Market Administrator's hands as "payments to pro-

ducers" from handlers, in the operation of the equalization system permitted by the Act, designed to give producers uniform prices irrespective of the uses made of their milk by the handler receiving it.

If all handlers in the market paid directly to the Market Administrator the use value of their milk, and he then distributed that use value to producers through uniform prices, retaining money for the cooperative payments before he did so, it would be apparent that the cooperatives were getting subsidies out of the money fixed by statutory mandate as the value of the producers' milk. For administrative convenience the Order accomplishes the same result through inter-handler adjustments. But the more complex nature of the regulatory scheme cannot disguise the fact that the cooperatives are being paid from sums of money fixed under the statute as the price of milk delivered by producers. Indeed, if in the administration of Order No. 4, the handlers subject thereto happened to have the same milk utilization in a given delivery period, none of them would make any substantial payment to the Market Administrator under Sec. 904.8(b)(3) except the sums he needed to disburse to the cooperatives, and those payments would be deductions directly made by each handler from the uniform price payable to his producers.

The Act permits fixing classified prices for milk received by handlers. It permits the producers in the market to share equally in the market-wide

value of milk at the classified price, through receipt of the uniform price. In the present case the Secretary of Agriculture intervenes before the producers receive the uniform price and without any statutory authority appropriates a portion of the value of their milk at the classified prices and directs its payments to cooperative associations. The pecuniary injury to producers is direct and plain. The Government conceded in its brief in the Court below (p. 8) "that only producers are *affected* by any payments out of the equalization fund".

The only question in the present case is whether some technical doctrine with respect to standing to sue or implied statutory prohibition against suit makes the injury of the producers "*damnum absque injuria*". To deny that the producers are injured on the theory that they are still at liberty to bargain with handlers for more money begs the question. It is unnecessary to labor the economic unreality of this chance. It is a novel doctrine to assert that a man loses the right to demand that to which he is legally entitled because he could bargain for more than that to which he is legally entitled. Because he could demand more than the law allows, does he thereby waive his right to that which the law allows? The chance, economically unreal and illusory although it is, that producers might bargain for more than the legally computed blended price hardly ~~affects~~ their right to receive

the legally computed blended price. If producers have no standing to challenge illegal deductions from the statutory uniform price for their product, then the Agricultural Marketing Agreement Act of 1937 ceases to be a statute permitting price regulation of milk and other products. It is transformed into a statute permitting exactions from milk dealers in the guise of prices to producers, which exactions are then subject to dispersion according to unregulated administrative caprice. But the Act and the valid provisions of the Order, as construed by this Court, indicate on the contrary that the producers have a substantive interest in the fund which their product creates.

For convenient analysis we have divided the argument as follows:

Producers have an equitable interest in the producer settlement fund which gives them standing to protect what rightfully belongs to them. Handlers have no financial interest therein, (*United States v. Rock Royal Co-operative, Inc.*) and the Government has no beneficial interest since the market administrator is a mere custodian of funds due producers. Private persons may protect their property in the hands of a government custodian from illegal dissipation.

Producers have standing to sue to prevent illegal interference with the contractual relations which arise from the sale of their milk to handlers. These rights are distinguishable from those asserted in

Wallace v. Ganley where no actual or threatened breach of contract was involved.

Because the Act gives producers the right to receive the prices for milk which the handlers must pay under the Order, the respondents are unlawfully denying to petitioners this statutory privilege by dissipating part of these monies. Consequently petitioners' loss is *not damnum absque injuria* and cases under statutes enacted in the proprietary capacity of the Government are inapplicable. In effect respondents prevent producers from receiving a uniform price as required by the Act.

Finally we point out that nothing in the Statute denies petitioners standing to complain and that their loss is not speculative or indeterminate.

ARGUMENT

I. THE PETITIONERS HAVE AN EQUITABLE INTEREST IN THE PRODUCER SETTLEMENT FUND WHICH GIVES THEM STANDING TO SUE.

The sums of money which come into the producer settlement fund are correctly described in the Order itself as payments "To producers through the market administrator". They represent the value of producers' milk at the classified prices. Handlers have no interest in the fund. The Market Administrator has no equitable ownership in the fund. Neither does the Secretary of Agriculture nor the Government of the United States.

A. Handlers have no interest in the producer settlement fund.

In *United States v. Rock Royal Co-operative*, 307 U. S. 533, handlers sought a determination of the specific issue which producers try to raise here, the validity of payments to cooperative associations and of deductions therefor in computing the blended price. The Government insisted that they had no standing to raise the point. The brief for the United States in that case discusses the relation of producers and handlers to the producer settlement fund at several points as follows:

"The effect of Order No. 27 is to create a market-wide pool of milk so that each handler, in effect, purchases his milk at the class prices from a *pool created by all producers* supplying milk to the market and not from the individual producers who deliver the milk to him" (pp. 27-28 of Brief). (Emphasis supplied.)

"It should be emphasized that the money involved in the payments to the Producer Settlement Fund is not money belonging to the handlers, because all handlers pay the same class prices for milk used, but is money which represents a part of the value of the milk delivered by producers" (p. 28 of Brief).

"The money involved in these payments represents a part of the value of the milk delivered by producers; it is money which should

be distributed among the producers, and it is this distribution which is accomplished by the equalization payments. The handlers as such have no right to any part of it at any time. When it is paid they are deprived of nothing. They have merely served as a conduit for its distribution among producers" (p. 125 of Brief).

At one point the Government Brief discusses market service or diversion payments, and the following statement is made:

"Like the cooperative payments they are paid out of monies due to producers" (p. 157).

This Court held that handlers had no standing to object to the terms of the Order providing for the payments to cooperative associations. The Court said (page 561):

"None of the defendants (all handlers), on the other hand, is in a position to raise the issue of lack of statutory authority for the payments authorized by Article VII, §§ 5 and 6. Whether cooperative or not, the defendant corporations have no financial interest in the producer settlement fund. All defendants pay into, or draw out of, that fund in accordance with their utilization of the milk delivered to them by their patrons. The defendants' profit or loss depends upon the spread each receives between the class price and sale price. If the

deductions from the fund are small or nothing, the patron receives a higher price but the handler is not affected."

B. The Government has no beneficial interest in the producer settlement fund.

It may be suggested that payments to cooperatives are made in the public interest, that the government on behalf of the public generally has the actual beneficial interest in the producer settlement fund. Such an argument overlooks the origin of the fund, strongly indicated in its very name. Handlers make payments into the fund because they owe more for their milk under the Order than they have paid. They do not owe it to the government. It is an obligation to producers. In this regard the description by the Court of the pool under the Bankhead Cotton Control Act, in *Thomson v. Deal*, 92 F(2d) 478, 482 is precisely applicable: "the money is entirely a private fund as to which the Treasurer is a mere custodian for private interests and the United States as such are strangers. It is not public money nor money subject to the appropriation of Congress, . . ."

It is obvious, of course, that the Market Administrator through whom payments are made to producers has no beneficial interest in the money thus coming through his hands. The Secretary of Agriculture has no interest or contact with the fund whatever, apart from his attempt, through the con-

tested term in the order, to divert part of it to co-operative associations.

There is nothing in *Dayton-Goose Creek Ry. v. United States*, 263 U.S. 456, 484, to indicate that the producer settlement fund is a unique statutory creation, to be devoted to public purposes, the use of which cannot be questioned by private individuals. It may be possible to have such a fund, but the *Dayton-Goose Creek* case is certainly not authority that the producer settlement fund is in that category. In that case part of freight charges in excess of a fair return to the carrier became the property of the government to create a fund for helping weaker roads. A carrier's objections were met by the following language (p. 484):

"It is then objected that the government has no right to retain one-half of the excess, since, if it does not belong to the carrier, it belongs to the shippers, and should be returned to them. If it were valid, it is an objection which the carrier cannot be heard to make. It would be soon enough to consider such a claim when made by the shipper. But it is not valid."

The Court went on to point out (p. 484) that "The excess caused by the *discrepancy* between the standard of reasonableness for the shipper and that for the carrier due to the necessity of maintaining uniform rates to be charged the shippers, may properly be appropriated by the Government for

public uses because the appropriation takes away nothing which equitably belongs either to the shipper or to the carrier." (Emphasis supplied.)

In the present case the Statute permits no discrepancy between the price handlers pay and the prices producers receive, which the government may appropriate for public uses. The Act requires the handlers to pay the minimum class prices for milk, and the producers have the right to receive the market-wide value of milk at those classified prices through receipt of the uniform prices. The government has no interest under the Act entitling it to draw off part of the producer settlement fund for its own or other public purposes. Certainly the Statute did not give the Secretary of Agriculture the right thus to divert part of this fund to what he conceived to be a proper purpose.

To hold that the producer settlement fund is a fund to be devoted by the Secretary of Agriculture to some vague and undefined public purpose which cannot be challenged in Court by the contributors thereto or by any other person leads to conclusions that demonstrate the unsoundness of the premise. It could be utilized to build post offices, roads, hospitals. The diversion could be large or small. It could swallow up the whole fund to the complete frustration of its purpose to return uniform prices to producers. And if no one had standing to challenge its diversion, the fund could be dissipated in bounties to private persons. This is the very thing

the petitioners allege is taking place here and with regard to which they have standing to complain.

C. Proper analysis of the order and of the nature of the producer settlement fund shows that producers are the real beneficiaries.

A study of the Statute, the Order, and previous decisions of this Court indicates the fund belongs to producers. To be sure, producers do not ordinarily receive payments from the fund, but that does not indicate, or even tend to indicate, that they are not the actual beneficiaries.

First of all the fund is created by the sale of petitioners' and other producers' milk, the product of their labor and capital. The monies paid into the fund are monies paid for goods sold and delivered by producers. Handlers pay dollars to the market administrator which they owe "to producers". If this were not perfectly obvious in any event, the Statute and Order make it doubly clear. The Statute provides that orders may establish minimum class prices for milk which "all handlers shall pay . . . for milk purchased from *producers or associations of producers.*" (Emphasis supplied) To that end, Order No. 4 provides (Sec. 904.4) that, "Each handler shall pay *producers*, in the manner set forth in Sec. 904.8" prices not less than the minimum class prices. (Emphasis supplied) Section 904.8 provides for payment to the market administrator of the excess of the minimum class

prices over the uniform price established pursuant to the Order, but the Order itself describes these payments as payments "To producers, through the market administrator". Even when the handler whose class price is less than the uniform price receives payments from the market administrator, the Order still describes them as constituting payments "To producers through the market administrator".

The final provision of Order No. 4 indicates that producers may have property rights in the producer settlement fund. Section 904.11(d) provides that upon suspension or termination of the Order, "any funds collected pursuant to the provisions hereof, over and above funds necessary to meet outstanding obligations and the expenses . . . , shall be distributed to the contributing handlers and producers in an equitable manner". Under the terms of the Order, only in an exceptional case, would any balance in the fund, after meeting outstanding obligations, belong to handlers. What they pay into the fund is "to producers". Producers would equitably own any balance remaining by the terms of the Order itself. This same section negatives any proprietary or public interest of the government in the fund.

That producers are the equitable owners of the producer settlement fund is borne out by the decision of the District Court for the District of Massachusetts, in *United States v. H. P. Hood & Sons*,

Inc., 26 F. Supp. 672, 679 (D. Mass.), *affirmed* 307 U. S. 588. In that case, Article IX of Order No. 4 as amended, then in force, regulating the handling of milk in the Greater Boston Marketing Area, provided for a deduction not exceeding two cents per hundredweight to be made by the handlers from the blended price payable to producers. The amount of the deduction was required to be paid the Market Administrator to be expended by him for market information to producers and the verification of weights, sampling and testing of their milk (2 Fed. Reg. 1333). During the pendency of the litigation, under a supersedeas order of the Circuit Court of Appeals, the sums required to be paid by handlers under Article IX of Order No. 4 as amended were ordered to be paid into the registry of the District Court of Massachusetts. Because the Market Administrator did not receive this money, the Special Master, to whom the case was referred for findings of fact, found that it was impossible for the Market Administrator to provide the current service for the periods for which he had not received the charge (Master's Report, paragraph 117, Record in *H. P. Hood & Sons, Inc. v. United States*, 307 U.S. 588, pages 152-153). Dealing with the situation, the Judge of the United States District Court held:

"Under the supersedeas of the Circuit Court the 'marketing service fee' was ordered to be paid into the hands of the clerk of this court. Obviously the administrator has been power-

less to provide the designated service to the producers. *Under the circumstances it would seem equitable to redistribute that 'marketing service-fee' to the producers from whom it was withheld by the handlers and paid into court.*

When and if an appellate court determines that the 'marketing service fee' is a proper charge, and should be paid to the marketing administrator, he will then be in a position to render the service and the charge should be exacted. The funds that are paid in the meantime, constituting this service charge, should be turned over to the marketing administrator for distribution to the producers from whom the money has been withheld." (Emphasis supplied). *H. P. Hood & Sons, Inc. v. United States*, 26 F. Supp. 672, 678.

The final decree of the District Court, affirmed by this Court, provided in paragraphs 7A, 7B, 7C for the distribution of the marketing service fee to producers in accordance with the Court's opinion (see Record, p. 103, in *H. P. Hood & Sons, Inc. v. United States*, in this Court). It is submitted that the opinion and decree constitute a recognition of the producers' equitable interest in sums deducted from the blended price.

The government admits that payments from the producer settlement fund "affect" producers, but denies that they have any interest therein substantial enough to support this suit. The government

now characterizes its operation by saying, "It is the handlers who make payments into and withdraw money from the fund, as a means of equalization, *inter sese*". This argument disregards the very terms of Order No. 4 which orders payments into the fund as payments "To producers, through the market administrator". Sec. 904.8 (b) (3). It is in striking contrast with the government's characterization of the fund in the *Rock Royal* case where the argument was made that fund was *created by producers from their money*. Then the government described the fund as "money which represents a part of the value of the milk delivered by all producers", "money which should be distributed among producers" (see page 24 *infra*). This description, the petitioners maintain, is as accurate today as it was then.

- D. Since producers have an interest in the producer settlement fund, they have standing to complain of its illegal dissipation.

Since petitioners are the beneficial owners of the settlement fund, it requires no extensive citation of authority to show that they have standing to sue a government official to prevent unlawful interference with their property without statutory authority.

In *Thompson v. Deal*, 92 F.(2d) 478, cotton producers were held to have a standing to challenge the disbursement by the manager of the National Cotton Pool of a fund in which they had an equi-

table interest, analogous to that asserted by the petitioners here. Under regulations promulgated by the Secretary of Agriculture under the Bankhead Act, cotton growers deposited in a pool surplus exemption certificates, which were thereafter purchased by growers who did not have an allotment to cover their crop. The purchase price of the certificates was then paid into the pool. When the Bankhead Act was repealed, the defendant manager of the pool proposed to distribute the fund to the persons who deposited the certificates. The plaintiffs who had purchased certificates sought to enjoin this disbursement. The Court then described the action in these terms (p. 483):

“Its entire purpose is to challenge the authority of certain government agents to distribute improperly, as appellants claim, a fund in which they have an interest and in which the government has none—as it is clear, we think that here the government has no proprietary or possessory rights in the fund. It is also clear that under the circumstances the court may impress an equitable lien on the money and order its return to equitable owners.”

Other analogous instances of suits against government officials based upon a beneficial property right may be cited. *Mellon v. Orinaco Iron Co.*, 266 U.S. 121, *Z. & F. Assets Corp. v. Hull*, 311 U.S. 470. In *Santa Fe Pacific RR v. Lane*, 244 U.S. 492, the beneficiary of a land grant had standing to pro-

test against an unlawful charge by the grantor government for surveying it. In *Ickes v. Fox*, 300 U.S. 82, beneficiaries contracting under the Reclamation Act and supplementary legislation had standing to restrain enforcement of an order purportedly issued thereunder, wrongfully limiting their water rights. These cases do not involve benefits in the sense of pure donations or gifts; neither does the instant case wherein producers must give valuable consideration by supplying milk. These petitioners merely seek their day in court to show that respondents have unlawfully compelled payment to other persons of part of the sums which by the terms of the Act and the Order themselves comprise payments to producers for milk. The decisions of the lower courts would deny them the right to attempt to show that their property is being illegally diverted to one group of producers, rather than to all producers uniformly as required by the Statute. Section 8 c (5) (B).

E. It is immaterial that the sanctions of the Act are applicable only to handlers.

It is no obstacle to the petitioners' standing to sue that the sanctions of the Act are made applicable to handlers (Sec. 8c (14)) or that the Act provides that no order shall be applicable to any producer in his capacity as producer. (Sec. 8c (13) (B)). The Act and the Order obviously affect a producer in his capacity as a vendor of his product. "To regulate the price for such transactions is to regulate

commerce itself, and not alone its antecedent conditions or its ultimate consequences. *The very act of sale is limited and governed.*" Cardozo, J. in *Carter v. Carter Coal Co.*, 298 U.S. 238, 326. Nor is the impact of sanctions a determinative criterion of standing to sue. In *Columbia Broadcasting System v. United States*, 316 U.S. 407, 422, the Court said:

"Appellant's standing to maintain the present suit in equity is unaffected by the fact that the regulations are not directed to appellant and do not in terms compel action by it or impose penalties upon it because of its action or failure to act. It is enough that by setting the controlling standards for the Commission's action, the regulations purport to operate to alter and affect adversely appellant's contractual rights and business relations with station owners whose applications for licenses the regulations will cause to be rejected and whose licenses the regulations may cause to be revoked."

Certainly in the present case producers do not lose their standing because orders are applicable only to handlers. One must look further to see if the challenged provisions of the order affect the price paid for their milk. Their standing to complain here is no different than it would be if the Order provided that handlers should pay the minimum price to the market administrator for producers, and then or-

dered the market administrator to pay half over to producers, and to pay himself the balance or to erect a monument with it. If the minimum prices were fixed in accordance with statutory standards, it still would be true that handlers had no financial interest in what became of their payments. But no one could assert that such a diversion of the fund did not operate to affect adversely the amount paid producers for their product. It is idle to say that such extreme examples need not be considered. The petitioners' complaint here charges an illegal diversion of the fund, which, though small as to each producer, aggregates many thousands of dollars for all producers. The holding of the Court below that producers have no standing to complain, leaves them without remedy for any diversion of the fund, no matter how great it might be. 7

II. THE PETITIONERS' STANDING TO SUE IS ESSENTIALLY DIFFERENT FROM THAT OF THE PRODUCERS IN *Wallace v. Ganley*, 95 F.(2d) 364.

The Court of Appeals considered that the allegations of the complaint which set forth that the petitioners sell their milk to handlers identified their rights as arising out of contract. Without any clear analysis of the nature of these contractual rights, the Court applied the doctrine of *Wallace v. Ganley*, 95 F.(2d) 364 (App. D.C.). That case held that producers who alleged that they had contracts

for prices higher than the minimum fixed by the Order and who did not allege that the threatened enforcement of the Order in any way adversely affected their contracts, had no standing to complain.

The petitioners' rights, so far as they may arise out of the contractual nature of the sale of their product, are essentially different from those of the producers in *Wallace v. Ganley*. The petitioners have no contracts entitling them to prices higher than the uniform price lawfully computed. In selling their milk to handlers, they have contracted with reference to the Act and the Order. The valid terms of the Order become an implied term of the arrangement by which they sell their product. Cf. *Northwestern Yeast Company v. Broutin*, 133 F. (2d) 628 (C.C.A. 6th). They do not bargain for a diminution of their return caused by an illegal deduction from the blended price. If the handler to whom they sell their milk had made an illegal deduction from the uniform price on his own initiative, the producers could effectually demand payment of the balance withheld. But here the handlers have actually paid the amount in question "To producers through the Market Administrator". The illegal appropriation of a portion of the price has occurred after the money has left the handlers' possession on its way to producers. And the handlers have no power to resist the expropriation since the money is in effect earmarked for

producers when it is paid to the Market Administrator. If the producers have a contractual right to receive the lawfully computed blended price, the illegal term of the Order directly interferes with that right. Under such circumstances, they have standing to complain. *Truax v. Raich*, 239 U.S. 33, *Pierce v. Society of Sisters*, 268 U.S. 510, *Scully v. Bird*, 209 U.S. 481, *Philadelphia Co. v. Stimson*, 223 U.S. 605.

It is not possible to justify the frustration of the producers' reasonable business expectation that they will receive the lawfully computed uniform price for their product by argument that they are free to bargain for a higher price. In the first place, if they have a right to the lawful blended price they do not lose it by not seeking more than the law allows them. In the second place, the freedom to bargain for higher than the lawful uniform price, under a regulation embracing market-wide equalization, is illusory. The essence of market-wide equalization is the sharing of the fluid milk outlets in the market. If producers sell their product to a handler who uses more of it for Class I purposes than the market average, that handler pays the full value of his milk at the classified prices to all producers in the area, not merely to his own producers. The amount he pays into the producer settlement fund places a definite restriction on the freedom of his own producers to obtain more than the lawful blended price. This restriction on the bargaining

power of producers is constitutional, but it is also economically very real. When the equalization provisions of the Order are infected with an illegal term, which eats into the sums paid into the pool and works a deduction from the blended price, the power of producers to bargain for higher prices for their products encounters a further obstacle and an illegal one. To remit producers to the remedy of attempting to bargain with handlers for sums of money, already paid by the handlers "to producers", and illegally diverted on the way, is to suggest a remedy utterly fanciful and unreal.

III. THE EXISTENCE OF PETITIONER'S LEGAL RIGHTS FINDS SUPPORT IN THE AGRICULTURAL MARKETING AGREEMENT ACT.

In *Tennessee Power Co. v. T.V.A.*, 306 U.S. 118, 137-138, Mr. Justice Roberts, speaking for this Court, included a legal right "founded on a statute which confers a privilege" as one which the courts would protect from illegal action by government officials. A statute may be the basis of a property right as in *Santa Fe Pacific R.R. v. Lane*, 244 U.S. 492; it may be the basis of a contract right as in *Walla Walla v. Walla Walla Water Co.*, 172 U.S. 1. Or a statute may confer a privilege as in *American School of Magnetic Healing v. McAnnulty*, 187 U.S. 94.

A. The terms of the Act and Order No. 4 imply the creation of rights in producers.

In the *Magnetic Healing* case; *supra*, an order of the Postmaster General barred the appellants from receiving mail, and it was held that they had standing to complain that the order was without statutory authority. In other words, they had a statutory privilege to have their mail delivered to them, although the Court assumed that Congress has full and absolute jurisdiction over who may or may not use the mails and that such action would not be subject to court review. See 187 U.S. 94, at 107. So here, once the Secretary of Agriculture has determined the minimum prices which they are to receive, petitioners are entitled to receive that price free from illegal attempts by the respondents to pay a portion of it to some other person.

The Order adopts terms authorized by Sec. 8c(5) (A) of the statute which permits the fixing of minimum class prices *payable to producers* for their milk. Upon the adoption of such a term, producers selling in the Greater Boston Area have a right to receive those prices in full, subject only to adjustments and differentials specified in the Act. The Order also includes terms under Sec. 8c(5) (B) (ii), providing for a uniform price, to be paid to all producers by all handlers, although the total class price of milk bought by each handler may be greater or less than the total of his uniform price payments. After setting up the equalization pool which resolves the apparent inconsistency of these two provisions by creating, in effect, a market-wide

pool of milk, the contested term of the Order (Sec. 904.7(b)(5)), as a part of the computation to establish the uniform price, takes away part of the minimum class prices owed to producers as a whole. Handlers are not thereby excused from paying an equivalent amount of the minimum class price. In that event, the same Order which seemed to create the right to receive the minimum class price would have, in effect, decreased those prices below those first named in the Order. Producers would never have become legally entitled to them. On the other hand, handlers would never come under a legal duty to pay out that amount to producers. However, the present Order requires that the minimum class prices shall be paid "to producers", and under the statute producers as a whole have the legal right to receive the minimum class prices which handlers pay (Sec. 8c(5)(A)). Instead, the Order, while purportedly requiring them to be paid "To producers, through the market administrator", requires the diversion of a part of these prices to the cooperatives which are certified by the respondents without any authority of the statute. The result is an interference with and partial destruction of petitioners' right to receive the minimum class prices, a legal right conferred by the statute when the Order adopts the terms of Sec. 8c(5)(A). It is accomplished by directing disbursement of part of the money to a favored class of producers, through their ownership of the co-

operatives, in contravention of the mandate of the statute that producers shall receive a uniform price.

B. The Statute need not specifically declare the creation of private rights.

Regardless of whether or not the Statute gives producers the right to attack minimum class prices which the Secretary of Agriculture may establish, producers are the beneficiaries of a statutory privilege to receive in full the class prices which he has established, subject only to adjustments and differentials authorized by the Statute. It is immaterial that Congress has not specifically indicated an intention to give producers legal rights and has applied sanctions only to handlers. In *American School of Magnetic Healing v. McAnnulty*, 187 U.S. 94, Congress had not specifically declared that anyone barred from the mails without statutory authority had a legal right to the use of the mails, and the Postmaster General's order did not compel or prohibit any action by the complainants. See also *Pike v. Walker*, 121 F. (2d) 37, (App. D.C.). Neither does a legislative grant of a corporate charter declare the intent to create irrevocable legal rights, but that is the law unless the legislature reserves the right to alter the corporate powers. *Dartmouth College v. Woodward*, 4 Wheat. 518.

This Court has held that the Transportation Act of 1920 entitled carriers to equality of treatment in regard to joint use of terminal facilities thereby

giving a carrier standing to contest an order of the Interstate Commerce Commission permitting the acquisition of control by a competing railroad, although Congress had not expressly indicated the purpose to create private rights. *The Chicago Junction Case*, 264 U.S. 258.

This Court has held that the Railway Labor Act creates in employees private rights which may be safeguarded and enforced by the Courts, although the Act itself contains no express provisions for employees' suits to protect those rights. *Virginian Railway Co. v. System Federation No. 40*, 300 U.S. 515; *Texas & N. O. R. Co. v. Brotherhood of Ry. and S. S. Clerks*, 281 U.S. 548.

Under the National Labor Relations Act, private parties have no standing to apply for a decree enforcing an order of the National Labor Relations Board. The statutory method for review by a Circuit Court of Appeals is exclusive. *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U.S. 261. Yet this Court has expressly left open the question of whether or not that Act creates such legal rights in unions or employees that they might contest illegal action of the National Labor Relations Board by independent suit. See *American Federation of Labor v. National Labor Relations Board*, 308 U.S. 401, 412. Lower federal courts have been called upon to decide the question, however, and have determined that unions do have standing to attack illegal action of the Board when

the exclusive form of review provided by the Act is not open to them. *International Brotherhood of Electrical Workers v. National Labor Relations Board*, 41 F. Supp. 57 (E.D. Mich.); *American Federation of Labor v. Madden*, 33 F. Supp. 943 (D. Col.); see *American Federation of Labor v. National Labor Relations Board*, 103 F. (2d) 933, 936 (App. D.C.) affirmed 308 U.S. 401; *Klein v. Herrick*, 41 F. Supp. 417 (S.D.N.Y.).

C. Petitioners' injury is not *damnum absque injuria*.

The respondents' position is that, however immediately and drastically petitioners may be affected by the deduction from their price or from the producer settlement fund to provide for payments to the cooperatives, their injury is, in effect, *damnum absque injuria*. However, it cannot be contended that the Order is merely an act of largesse which serves only to reinforce the producers' position *vis a vis* the handlers, by insuring them a minimum return at least equal to the blended price, but which gives them no right to insure computation of that price from the market-wide class values of milk in accordance with the Act. The statute here was not enacted in the proprietary capacity of the Federal government, designed solely to regulate the internal affairs of administration, but was enacted to regulate interstate commerce. Cases such as *Perkins v. Lukens Steel Co.*, 310

U.S. 113, and *Alabama Power Co. v. Ickes*, 302 U.S. 464, therefore have no application to the facts presented here. The acceptance by the petitioners of benefits under the Act and Order No. 4 does not estop them in any manner from asserting the illegality of other separable portions of the Order. *Cf. Thompson v. Consolidated Gas Utilities Corp.*, 300 U.S. 55, 80.

Petitioners do not here necessarily contend that Congress intended to confer upon producers standing to challenge the class prices fixed by the Order. To assert that their position is based on that premise ignores rather than meets the core of petitioners' argument. They contend only that the respondent Secretary of Agriculture, having fixed the class prices payable to producers pursuant to Sec. 8(c)(5)(A) of the statute, cannot direct that someone other than producers, or just one class of producers, shall receive part of the money. Under the terms of the statute the price is payable to all producers and respondents directly injure petitioners by an invasion of their legal rights when they direct otherwise.

The Act guarantees the plaintiffs, not merely that they will be paid at the blended price, but, in addition, that their return and that of other producers in the market will be "uniform", subject only to the specific differentials authorized by its terms (Sec. 8c(5)(B)). If as the complaint sets forth the cooperative payments are unauthorized,

the uniformity of returns under the Act has been destroyed, because the petitioners have been made subject to a deduction not shared by producers who are members of the cooperatives (whose members participate in co-operative assets). The petitioners, against whom this discrimination operates, have standing to protest. *Cf. The Chicago Junction Case*, 264 U.S. 258.

Regulation of the petitioners' business by the Order is admittedly within the powers of Congress; and it is now settled that in the interests of orderly marketing some producers may be forced through equalization to surrender the price advantage which they once enjoyed through favorable outlets to the fluid market. *United States v. Rock Royal Co-operative, Inc.*, 307 U.S. 533. Since their business is subject to regulation even though sanctions are not applied to them, producers have a right to demand that that regulation be carried out, without discrimination and in accordance with the mandate of Congress. In a word, producers are certainly entitled to have their minimum and "uniform" prices lawfully computed, if fixed at all.

Congress has not provided elsewhere for adequate protection of producers' legal rights. While producers may appear at hearings conducted by the Secretary of Agriculture, they are not parties and cannot obtain court review of the Secretary's rulings. Their only recourse is to the courts. It

would be illogical to suggest as an answer that the respondents are charged with the duty of protecting producers' interests when they stand here charged with an unauthorized invasion of producers' legal rights.

To say, as the court below did, that this suit is one in which the court is asked to interfere with the official discretion of government officers, entirely misconceives petitioners' legal rights supporting their standing to sue, as well as the case on its merits. To prevent a government officer from doing what he has no legal right to do is not an interference with his discretion. *Ex Parte Young*, 209 U.S. 123, 159. This rule applies equally to action without statutory authority as to action under an unconstitutional statute, and to federal officials as well as state. *Philadelphia Co. v. Stimson*, 223 U.S. 605.

In its recent decision, *Switchmen's Union of North America v. National Mediation Board*, — U.S. — (decided November 22, 1943) this Court has not repudiated the settled rule that acts of an official which exceed his statutory powers may be challenged by private persons whose legally protected interests are invaded. In that case the National Mediation Board was acting within the scope of its statutory authority. This Court held that the history and language of the applicable statute indicated a Congressional design to place beyond judicial review the manner in which the

Board exercised its statutory prerogative. In the present case the petitioners complain of action by the Secretary of Agriculture beyond his statutory authority and in contravention of the statutory mandate. They rely upon the familiar principle that "there is no place in our constitutional system for the exercise of arbitrary power, and if the Secretary has exceeded the authority conferred upon him by law, then there is power in the courts to restore the status of the parties aggrieved by such unwarranted action." *Garfield v. Goldsby*, 211 U.S. 249, 262. The decisions of this Court preserve a clear distinction between a challenge to discretionary administrative action within the confines of statutory power and a challenge to administrative action which leaps over statutory bounds. *Garfield v. Goldsby, supra*; *Ness v. Fisher*, 223 U.S. 683; *Ickes v. Fox*, 300 U.S. 82; *West v. Standard Oil Co.*, 278 U.S. 200; *Work v. Louisiana*, 269 U.S. 250, 254. The plaintiffs in the *Switchmen's* case were not barred *in limine* on the ground that they had no legally protected interest at stake, as were the petitioners here in the Courts below. Relief was denied in the *Switchmen's* case on the basis that the grievance had been placed by Congress outside the field of judicial inquiry. In the present case the Act itself (Sec. 8c(15)(B)) contains express provision for judicial review of the Secretary's acts.

Petitioners' interest is not indeterminable, re-

mote or uncertain. On the contrary, the injury is direct. The extent of injury is susceptible of accurate computation. The aggregate loss to producers in the position of these petitioners since adoption of the provisions which they seek to attack averages \$15,000 a month in the Boston Marketing Area alone.¹ While the loss to each producer is small in any limited period, it is definite and of considerable moment even to individual producers over a period of several years. The principle of *Massachusetts v. Mellon*, 262 U.S. 447 does not offer even a remote analogy, since the action of respondents here is the equivalent of a direct tax upon the sale of these petitioners' milk without legal authority. It would be a novel doctrine to assert that one who pays a tax cannot show that Congress has not authorized the illegal exaction.

IV. THE STATUTE CONTAINS NO PROHIBITION, EXPRESS OR IMPLIED, AGAINST SUIT BY PRODUCERS TO PREVENT AN UNLAWFUL DISSIPATION OF THE PRODUCER SETTLEMENT FUND.

There are express provisions in the Act granting administrative relief to a handler, who may file a written petition with the Secretary of Agriculture

¹ The provisions challenged by the petitioners have remained in effect in all substantial particulars in the Boston Milk Order from August 1, 1941 to the present time. Various amendments to the Order since that time have not altered the substance of these provisions. (Amendment No. 1, effective October 28, 1941, 6 Fed. Reg. 5481; Amendment No. 2, effective April 3, 1942, 7 Fed. Reg. 2529; Order No. 4 as amended, effective March 15, 1943, 8 Fed. Reg. 3109, further amended June 21,

"stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom". (Sec. 8c(15) (A)). Judicial review is provided in Sec. 5c(15) (B)). This grant of administrative relief to the handler is not tantamount to the denial of judicial remedy to the producer, who seeks to vindicate his own substantive rights. Handlers are not financially interested in the producer settlement fund; producers are. There is no assurance that handlers can raise in an administrative petition the illegality of the payments to cooperative associations out of the fund. This Court has held they have no standing to raise that issue in direct litigation in the Courts because they are not "affected" by such payments in which they have no financial interest. In addition, the Second Circuit Court of Appeals has held that the Act does not accord to a handler through administrative petition and subsequent judicial review the right to contest provisions which do not "affect" him. *Queensboro Farm Products v. Wickard*, 137 F. (2d) 969.

1943, 8 Fed. Reg. 8294.) Payments to cooperatives out of the equalization pool through September 1943 have been as follows:

August 1941 through December 1941.	\$67,165.62
January 1942 through December 1942.	\$177,523.60
January 1943 through September 1943.	\$150,749.21
Total (August 1941 through September 1943)	\$395,438.43

The concept of a private person endowed with power to vindicate the public interest has been evolved from the decision of this Court in *Federal Communications Commission v. Sanders Bros. Radio Station*, 309 U.S. 470. In that case, the Court pointed out "that while a station license was not a property right, and while the Commission was not bound to give controlling weight to economic injury to an existing station consequent upon the issuance of a license to another station, yet economic injury gave the existing station standing to present questions of public interest and convenience by appeal from the order of the Commission". *Federal Communications Commission v. National Broadcasting Company, Inc.*, 319 U.S. 239, 247. One Federal Court has construed the *Sanders* case to mean that Congress may designate some non-official person to vindicate the public interest in proper execution of statutory authority, although such private person shows no protected private right. *Associated Industries v. Ickes*, 134 F. (2d) 694 (C.C.A. 2nd), reversed and remanded on other grounds — U.S. — (October 18, 1943). However, in the *Sanders* case the litigant suffered "economic injury" upon which its standing was predicated. Even so, doubt has been expressed "with the constitutionality of a statutory scheme which allowed one who showed no invasion of a private right to call on courts to review an order of the Commission". Mr. Justice

Douglas dissenting in *Federal Communications Commission v. National Broadcasting Company, Inc., supra*. Whether handlers suffer "economic injury" as the result of deductions from a fund in which they have no financial interest is a problem not presented by the present record. However, if handlers have no standing to contest the payments in question through an administrative petition culminating in judicial review, the producer settlement fund can be dissipated in violation of the Statute, unless producers have a standing in Court to protect it.

The producers' standing to complain of the illegal diversion of the producer settlement fund, however, does not rest on the solution of the problem of the scope of the administrative review available to the handler. Statutory specification of one mode of relief to the handler may exclude the handler from another. This follows from a familiar rule of statutory construction. (See *Switchmen's Union of North America v. National Mediation Board*, — U.S. — (decided November 22, 1943), and cases there collected.) It does not follow from the same rule, or the authorities applying it, that the availability of administrative petition and judicial review to the handler shuts the doors of the Courts to producers when they seek to protect their own distinct personal rights. Producers need not wait upon the discretion of others to protect their own rights. To deny a person the

power to assert his own rights is to deprive him of property without due process of law. *Cf. Poindexter v. Greenhow*, 114 U.S. 270, 303.

To palliate the denial to producers of standing to challenge the dissipation of the producer settlement fund, the respondents have hitherto pointed to various evidence in the Act of Congressional solicitude for the welfare of producers. Specifically it is claimed that the Act gives producers the right to appear and be heard before the order or amendment thereto is issued. (Sec. 8c(3)). In certain circumstances, no order or amendment can become effective unless the Secretary determines two thirds of the producers favor it. (Sec. 8c(8)). The Secretary must terminate an order (Sec. 8c(16)(B)) whenever he finds that such termination is favored by a majority of producers. These provisions, alone or taken together, cannot be construed as an implied prohibition in the Statute against the present action. If they do not have that significance, they have no materiality. The contention is not made that the substantive rights of the petitioners are divested by majority or two-thirds vote, or that such a vote can authorize the insertion in an Order of a term forbidden by the Act. Indeed the provisions in the Statute (Sec. 8c(12)) by which the cooperative association votes as a unit for its members increase the necessity for judicial protection of the rights of non-members when the Order contains a term not authorized

by Statute in which the cooperatives have a direct financial interest. For as a practical matter, the officers of the cooperative association are able to vote money into their own corporate treasury when they direct that the association record itself in favor of a term in a Milk Order, which provides payments to cooperatives out of the producer settlement fund.

V. PETITIONERS' INJURY IS NOT SPECULATIVE OR INDETERMINATE.

It has been shown that the payments to cooperative associations are made out of the producer settlement fund through a reduction of the blended price (pages 16 to 18, *infra*). The complaint alleges that the deduction of \$15,575.31 made in the August, 1941 delivery period to effectuate these payments decreased the blended price in said month by 1.55 cents per hundredweight. (Complaint, paragraph 12, R. p. 10). The answer of the respondent admitted this allegation but alleged that "loss to the plaintiffs cannot be shown because it is obviously impossible to determine for the purposes of comparison what the blended price would have been in the absence of such amendments" (Answer paragraph 7, R. pp. 21, 22). On this basis, the Government in the Court below and its brief opposing certiorari (pages 12, 13) ad-

vanced the argument that the petitioners' loss is speculative or indeterminate.

The short answer to this contention is that the District Court and the Court of Appeals did not and could not deal with the issue of fact which it presents: whether the payments to cooperatives had the effect of increasing the blended price to producers under the Order. The matter was set up in the respondent's answer but the Courts below considered only the first defense in that answer, to wit: "The complaint fails to state a claim against the defendant upon which relief can be granted". The complaint stated a definite and precise pecuniary injury, ascertainable with mathematical accuracy. There was no occasion for the District Court or the Court of Appeals to deal with the allegations in the answer which were not before them, and on which proof would unquestionably be called for at a trial on the merits.

Moreover, analysis shows the fallacy inherent in the argument, set forth in paragraph seven of the respondent's answer, that the petitioners' loss is speculative because cooperative payments may have increased indirectly the blended price. Payments to cooperatives out of the pool could not increase the blended price unless they increased the classified prices established by the Order. The prospect of these payments could not increase the classified prices because those prices purport to be fixed, here and now, in accordance with the

standard of the Statute (Act, Sec. 8c(18), Order No. 4/as amended. Finding 2, Sec. 904.0.) The statutory standard does not permit the Secretary, in establishing classified prices, to consider the operation *in futuro*, of a term inserted in the Order without statutory authority. If the Secretary's answer (paragraph 7, R. pp. 21, 22) means that he fixed the classified prices higher than he otherwise would, because he intended to provide for the payments to cooperative associations, then the Secretary is, in effect, asserting that the classified price structure of the Order is tainted with the illegal provision for payments to cooperative associations. The petitioners are reluctant to believe that in order to prove their injury speculative, the respondent Secretary will attempt, or be permitted to prove, that the whole price structure of the Order collapses with the challenged term. In any event, the full significance of the respondent's answer can only be probed by a trial on the merits. The petitioners attack in their complaint only the provisions of the Order permitting an illegal deduction from the blended price. They do not attack the classified prices fixed in the Order. If the classified prices are validly established the petitioners have suffered a pecuniary injury, which is not speculative or indeterminate, but definite and mathematically ascertainable.

CONCLUSION.

It is submitted that the judgment of the Court of Appeals should be reversed and the cause remanded.

Respectfully submitted,

H. BRIAN HOLLAND,
EDWARD B. HANIFY,
WILSON C. PIPER,
HARRY POLIKOFF.

Counsel for Petitioners

UNITED STATES DEPARTMENT OF AGRICULTURE
DIVISION OF MARKETING AND MARKETING AGREEMENTS

**COMPILATION OF AGRICULTURAL
MARKETING AGREEMENT
ACT OF 1937**

**REENACTING, AMENDING, AND
SUPPLEMENTING THE AGRICULTURAL
ADJUSTMENT ACT, AS AMENDED**

**(Including Amendments of the
76th Congress, 1st Session)**



**UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1939**

PREFATORY NOTE

This compilation is intended to indicate the present status of legislation by Congress relating to marketing agreements and orders regulating the handling of agricultural commodities in interstate and foreign commerce. The Agricultural Marketing Agreement Act of 1937, approved June 3, 1937 (Public. No. 137—75th Congress—Chap. 296, 1st Session, 7 U. S. C. A. 674, 50 Stat. 249), reenacted and amended certain provisions of the Agricultural Adjustment Act, as amended, relating to marketing agreements and orders. Related legislation enacted prior to June 3, 1937, is given in the compilation known as "Annotated Compilation of the Agricultural Adjustment Act, as Amended, and Acts Relating Thereto at the Close of the First Session of the Seventy-Fourth Congress, August 26, 1937" Superintendent of Documents, Washington, D. C.

Throughout the text of this compilation, bold face type is used for the language of the Agricultural Marketing Agreement Act of 1937; light face type is used for the language of the Agricultural Adjustment Act, as amended, as reenacted by the Agricultural Marketing Agreement Act of 1937; italics are used for amendments made by section 2 of the Agricultural Marketing Agreement Act of 1937 to the Agricultural Adjustment Act, as amended.

The provisions of section 2 of the Agricultural Marketing Agreement Act of 1937 are not set out *haec verba*. They are, however, incorporated in the body of the provisions of the Agricultural Adjustment Act, as amended, which they amend. References to the amendatory provisions of section 2 of the Agricultural Marketing Agreement Act of 1937 are contained in the footnotes. Reference to recent amendments to the Agricultural Adjustment Act, as amended, and to the Agricultural Marketing Agreement Act of 1937 are contained in the footnotes.

COMPILATION OF AGRICULTURAL MARKETING AGREEMENT ACT OF 1937 REENACTING, AMENDING AND SUPPLEMENTING THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED

AN ACT

To reenact and amend provisions of the Agricultural Adjustment Act, as amended, relating to marketing agreements and orders.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the following provisions of the Agricultural Adjustment Act, as amended, not having been intended for the control of the production of agricultural commodities, and having been intended to be effective irrespective of the validity of any other provision of that act are expressly affirmed and validated, and are reenacted without change except as provided in section 2:

(a) Section 1 (relating to the declaration of emergency):

DECLARATION

It is hereby declared that the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce.²

(b) Section 2 (relating to declaration of policy):

DECLARATION OF POLICY

SEC. 2. It is hereby declared to be the policy of Congress—

(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to establish and maintain such

¹For annotations to the Agricultural Adjustment Act, as amended; for provisions of that act not reenacted by the provisions of the Agricultural Marketing Agreement Act of 1937; and for other acts of Congress relating both to the Agricultural Adjustment Act, as amended, and to the Agricultural Marketing Agreement Act of 1937 see "Annotated Compilation of Agricultural Adjustment Act as Amended and Acts Relating Thereto at the Close of the First Session of the 74th Congress, August 26, 1935"; Superintendent of Documents, Washington, D. C.

²As amended by sec. 2 (a) of the Agricultural Marketing Agreement Act of 1937. The text of sec. 1 of the Agricultural Adjustment Act, as amended, was as follows:

"DECLARATION OF EMERGENCY"

"That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities, and render imperative the immediate enactment of title I of this Act."

*orderly marketing conditions for agricultural commodities in interstate commerce as will establish*³ prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; and, in the case of all commodities for which the base period is the pre-war period, August 1909, to July 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during the base period. The base period in the case of all agricultural commodities except tobacco and potatoes shall be the pre-war period, August 1909-July 1914. In the case of tobacco and potatoes, the base period shall be the postwar period, August 1919-July 1929.

(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section.

(c) Section 8a (5), (6), (7), (8), and (9) relating to violations and enforcement;

SEC. 8a(5) Any person willfully exceeding any quota or allotment fixed for him under this title by the Secretary of Agriculture, and any other person knowingly participating, or aiding, in the exceeding of said quota or allotment, shall forfeit to the United States a sum equal to three times the current market value of such excess, which forfeiture shall be recoverable in a civil suit brought in the name of the United States.

(6) The several district courts of the United States are hereby vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating⁴ any order, regulation, or agreement, heretofore or hereafter made or issued pursuant to this title in any proceeding now pending or hereafter brought in said courts.

(7) Upon the request of the Secretary of Agriculture, it shall be the duty of the several district attorneys of the United States, in their respective districts, under the directions of the Attorney General, to institute proceedings to enforce the remedies and to collect the forfeitures provided for in, or pursuant to, this title. Whenever the Secretary, or such officer or employee of the Department of Agriculture as he may designate for the purpose, has reason to believe that any handler has violated, or is violating, the provisions of any order or amendment thereto issued pursuant to this title, the Secretary shall have power to institute an investigation and, after due notice to such handler, to conduct a hearing in order to deter-

³The italicized words were substituted, by sec. 2 (b) of the Agricultural Marketing Agreement Act of 1937, in lieu of the words: "balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish".

⁴The following was deleted by section 2 (c) of the Agricultural Marketing Agreement Act of 1937: "the provisions of this section, or of".

mine the facts for the purpose of referring the matter to the Attorney General for appropriate action.

(8) The remedies provided for in this section shall be in addition to, and not exclusive of, any of the remedies or penalties provided for elsewhere in this title or now or hereafter existing at law or in equity.

(9) The term "person" as used in this title includes an individual, partnership, corporation, association, and any other business unit.

(d) Section 8b (relating to marketing agreements);

SEC. 8b. In order to effectuate the declared policy of this title, the Secretary of Agriculture shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, only with respect to such handling as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful: Provided, That no such agreement shall remain in force after the termination of this Act. For the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under section 5 of the Reconstruction Finance Corporation Act. Such loans shall not be in excess of such amounts as may be authorized by the agreements.

(e) Section 8c (relating to orders);

ORDERS

SEC. 8c. (1) The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in this title as "handlers." Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.

COMMODITIES TO WHICH APPLICABLE

(2) Orders issued pursuant to this section shall be applicable only to the following agricultural commodities and the products thereof (except products of naval stores and the products of honeybees),² or to any regional, or market classification of any such commodity or product: Milk, fruits (including pecans and walnuts but not including apples, other than apples produced in the States of Washington, Ore-

²The words "and the products of honeybees" were inserted by public. No. 246, 75th Congress, Chapter 567, 1st session, approved August 5, 1937.

gon, and Idaho,* and not including fruits, other than olives, for canning), tobacco, vegetables (not including vegetables, other than asparagus, for canning), soybeans, hops,† honeybees,‡ and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin).

NOTICE AND HEARING

(3) Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this title with respect to any commodity or product thereof specified in subsection (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

FINDING AND ISSUANCE OF ORDER

(4) After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this title with respect to such commodity.

TERMS—MILK AND ITS PRODUCTS

(5) In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made; for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers.

(B) Providing:

(i) for the payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered by them: Provided, That, except in the

*The words "other than apples produced in the States of Washington, Oregon, and Idaho," were added by Public, No. 98, 76th Congress, Chapter 157, 1st session, approved May 31, 1939.

†The word "hops," was inserted by and the following provision was contained in Public, No. 482, 75th Congress, Chapter 143, 3d session, approved April 13, 1938:

"Sec. 3. No order issued pursuant to section 8c of the Agricultural Adjustment Act, as amended, shall be applicable to hops except during the two crop years next succeeding the date of enactment of this Act."

The provision quoted was amended by Public, No. 91, 76th Congress, Chapter 159, 1st session, approved May 26, 1939, to read as follows:

"Sec. 3. No orders issued pursuant to section 8c of the Agricultural Adjustment Act, as amended, shall be applicable to hops after September 1, 1942."

‡The word "honeybees," was inserted by Public, No. 246, 75th Congress, Chapter 567, 1st session, approved August 5, 1937.

case of orders covering milk products only, such provision is approved or favored by at least three-fourth of the producers who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from any other approval or disapproval provided for by this section; or

(ii) for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered;

subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered, (c) the locations at which delivery of such milk is made, and (d) a further adjustment, equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their *marketings*⁹ of milk during a representative period of time.

(C) In order to accomplish the purposes set forth in paragraphs (A) and (B) of this subsection (5), providing a method for making adjustments in payments, as among handlers (including producers who are also handlers), to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at the prices fixed in accordance with paragraph (A) hereof.

(D) Providing that, in the case of all milk purchased by handlers from any producer who did not regularly sell milk during a period of 30 days next preceding the effective date of such order for consumption in the area covered thereby, payments to such producer, for the period beginning with the first regular delivery by such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month, shall be made at the price for the lowest use classification specified in such order, subject to the adjustments specified in paragraph (B) of this subsection (5).

(E) Providing (i) except as to producers for whom such services are being rendered by a cooperative marketing association, qualified as provided in paragraph (F) of this subsection (5), for market information to producers and for the verification of weights, sampling, and testing of milk purchased from producers, and for making appropriate deductions therefor from payments to producers, and (ii) for assurance of, and security for, the payment by handlers for milk purchased.

(F) Nothing contained in this subsection (5) is intended or shall be construed to prevent a cooperative marketing association qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," engaged in making

⁹The word "production" was deleted and the word "marketings" was substituted by section 2 (d) of the Agricultural Marketing Agreement Act of 1937.

collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers: Provided, That it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this subsection (5) for such milk.

(G) No marketing agreement or order applicable to milk and its products in any marketing area shall prohibit or in any manner limit, in the case of the products of milk, the marketing in that area of any milk or product thereof produced in any production area in the United States.

TERMS—OTHER COMMODITIES

(6) In the case of fruits (including pecans and walnuts but not including apples, *other than apples produced in the States of Washington, Oregon, and Idaho*,¹⁰ and not including fruits, other than olives, for canning) and their products, tobacco and its products, vegetables (not including vegetables, other than asparagus, for canning) and their products, soybeans and their products, *hops*,¹¹ *honeybees*,¹² and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin), orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

(A) Limiting, or providing methods for the limitation of, the total quantity of any such commodity or product, or of any grade, size, or quality thereof, produced during any specified period or periods, which may be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods by all handlers thereof.

(B) Allotting, or providing methods for allotting, the amount of such commodity or product, or any grade, size, or quality thereof, which each handler may purchase from or handle on behalf of any and all producers thereof, during any specified period or periods, under a uniform rule based upon the amounts¹³ sold by such producers in such prior period as the Secretary determines to be representative, or upon the current *quantities available for sale by*¹⁴ such producers, or both, to the end that the total quantity thereof to be purchased, or handled during any specified period or periods shall be apportioned equitably among producers.

(C) Allotting, or providing methods for allotting, the amount of any such commodity or product, or any grade, size, or quality thereof, which each handler may market in or transport to any or all markets

¹⁰ Public, No. 98, 76th Congress, Chapter 157, 1st session, approved May 31, 1939.

¹¹ Public, No. 482, 75th Congress, Chapter 143, 3d session, approved April 13, 1938.

¹² Public, No. 246, 75th Congress, Chapter 567, 1st session, approved August 5, 1937.

¹³ The words "produced or" were deleted by section 2 (e) of the Agricultural Marketing Agreement Act of 1937.

¹⁴ The italicized words were substituted by section 2 (e) of the Agricultural Marketing Agreement Act of 1937, in lieu of the words: "production or sales of".

in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, under a uniform rule based upon the amounts which each such handler has available for current shipment, or upon the amounts shipped by each such handler in such prior period as the Secretary determines to be representative, or both, to the end that the total quantity of such commodity or product, or any grade, size, or quality thereof, to be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods shall be equitably apportioned among all of the handlers thereof.

(D) Determining, or providing methods for determining, the existence and extent of the surplus of any such commodity or product, or of any grade, size, or quality thereof, and providing for the control and disposition of such surplus; and for equalizing the burden of such surplus elimination or control among the producers and handlers thereof.

(E) Establishing, or providing for the establishment of, reserve pools of any such commodity or product, or of any grade, size, or quality thereof, and providing for the equitable distribution of the net return derived from the sale thereof among the persons beneficially interested therein.

TERMS COMMON TO ALL ORDERS

(7) In the case of the agricultural commodities and the products thereof specified in subsection (2) orders shall contain one or more of the following terms and conditions:

(A) Prohibiting unfair methods of competition and unfair trade practices in the handling thereof.

(B) Providing that (except for milk and cream to be sold for consumption in fluid form) such commodity or product thereof, or any grade, size, or quality thereof shall be sold by the handlers thereof only at prices filed by such handlers in the manner provided in such order.

(C) Providing for the selection by the Secretary of Agriculture, or a method for the selection, of an agency or agencies and defining their power and duties, which shall include only the powers:

(i) To administer such order in accordance with its terms and provisions;

(ii) To make rules and regulations to effectuate the terms and provisions of such order;

(iii) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of such order; and

(iv) To recommend to the Secretary of Agriculture amendments to such order.

No person acting as a member of an agency established pursuant to this paragraph (C) shall be deemed to be acting in an official capacity, within the meaning of section 10 (g) of this title, unless such person receives compensation for his personal services from funds of the United States.

(D) Incidental to, and not inconsistent with, the terms and conditions specified in subsections (5), (6), and (7) and necessary to effectuate the other provisions of such order.

ORDERS WITH MARKETING AGREEMENT

(8) Except as provided in subsection (9) of this section, no order issued pursuant to this section shall become effective until the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of not less than 50 per centum of the volume of the commodity or product thereof covered by such order which is produced or marketed within the production or marketing area defined in such order have signed a marketing agreement, entered into pursuant to section 8b of this title, which regulates the handling of such commodity or product in the same manner as such order, except that as to citrus fruits produced in any area producing what is known as California citrus fruits no order issued pursuant to this subsection (8) shall become effective until the handlers of not less than 80 per centum of the volume of such commodity or product thereof covered by such order have signed such a marketing agreement: Provided, That no order issued pursuant to this subsection shall be effective unless the Secretary of Agriculture determines that the issuance of such order is approved or favored:

(A) By at least two-thirds of the producers who (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers), during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(B) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

ORDERS WITH OR WITHOUT MARKETING AGREEMENT

(9) Any order issued pursuant to this section shall become effective in the event that, notwithstanding the refusal or failure of handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) covered by such order which is produced or marketed within the production or marketing area defined in such order to sign a marketing agreement relating

to such commodity or product thereof, on which a hearing has been held, the Secretary of Agriculture, with the approval of the President, determines:

(A) That the refusal or failure to sign a marketing agreement (upon which a hearing has been held) by the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) specified therein which is produced or marketed within the production or marketing area specified therein tends to prevent the effectuation of the declared policy of this title with respect to such commodity or product, and

(B) That the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy, and is approved or favored:

(i) By at least two-thirds of the producers (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers) who, during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(ii) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

MANNER OF REGULATION AND APPLICABILITY

(10) No order shall be issued under this section unless it regulates the handling of the commodity or product covered thereby in the same manner as, and is made applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held. No order shall be issued under this title prohibiting, regulating, or restricting the advertising of any commodity or product covered thereby, nor shall any marketing agreement contain any provision prohibiting, regulating, or restricting the advertising of any commodity or product covered by such marketing agreement.

REGIONAL APPLICATION

(11) (A) No order shall be issued under this section which is applicable to all production areas or marketing areas, or both, of any commodity or product thereof unless the Secretary finds that the issuance of several orders applicable to the respective regional pro-

duction areas or regional marketing areas, or both, as the case may be, of the commodity or product would not effectively carry out the declared policy of this title.

(B) Except in the case of milk and its products, orders issued under this section shall be limited in their application to the smallest regional production areas or regional marketing areas, or both, as the case may be, which the Secretary finds practicable, consistently with carrying out such declared policy.

(C) All orders issued under this section which are applicable to the same commodity or product thereof shall, so far as practicable, prescribe such different terms, applicable to different production areas and marketing areas, as the Secretary finds necessary to give due recognition to the differences in production and marketing of such commodity or product in such areas.

COOPERATIVE ASSOCIATION REPRESENTATION

(12) Whenever, pursuant to the provisions of this section, the Secretary is required to determine the approval or disapproval of producers with respect to the issuance of any order, or any term or condition thereof, or the termination thereof, the Secretary shall consider the approval or disapproval by any cooperative association of producers, bona fide engaged in marketing the commodity or product thereof covered by such order, or in rendering services for or advancing the interests of the producers of such commodity, as the approval or disapproval of the producers who are members of, stockholders in, or under contract with, such cooperative association of producers.

RETAILER AND PRODUCER EXEMPTION

(13) (A) No order issued under subsection (9) of this section shall be applicable to any person who sells agricultural commodities or products thereof at retail in his capacity as such retailer, except to a retailer in his capacity as a retailer of milk and its products.

(B) No order issued under this title shall be applicable to any producer in his capacity as a producer.

VIOLATION OF ORDER

(14) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order (other than a provision calling for payment of a pro rata share of expenses) shall, on conviction, be fined not less than \$50 or more than \$500 for each such violation, and each day during which such violation continues shall be deemed a separate violation: Provided, That if the court finds that a petition pursuant to subsection (15) of this section was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under this subsection for such violations as occurred between the date upon which the defendant's petition was filed with the Secretary, and the date upon which notice of the Secretary's ruling thereon was given to the defendant in accordance with regulations prescribed pursuant to subsection (15).

PETITION BY HANDLER AND REVIEW

(15) (A) Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(B) The District Courts of the United States (including the Supreme Court of the District of Columbia) in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 8a (6) of this title. Any proceedings brought pursuant to section 8a (6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15)) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15).

TERMINATION OF ORDERS AND MARKETING AGREEMENTS

(16) (A) The Secretary of Agriculture shall, whenever he finds that any order issued under this section, or any provision thereof, obstructs or does not tend to effectuate the declared policy of this title, terminate or suspend the operation of such order or such provision thereof.

(B) The Secretary shall terminate any marketing agreement entered into under section 8b, or order issued under this section, at the end of the then current marketing period for such commodity, specified in such marketing agreement or order, whenever he finds that such termination is favored by a majority of the producers who, during a representative period determined by the Secretary, have been engaged in the production for market of the commodity specified in such marketing agreement or order, within the production area specified in such marketing agreement or order, or who, during such representative period, have been engaged in the production of such commodity for sale within the marketing area specified in such marketing agreement or order: Provided, That such majority have,

during such representative period, produced for market more than 50 per centum of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or have, during such representative period, produced more than 50 per centum of the volume of such commodity sold in the marketing area specified in such marketing agreement or order, but such termination shall be effective only if announced on or before such date (prior to the end of the then current marketing period) as may be specified in such marketing agreement or order.

(C) The termination or suspension of any order or amendment thereto or provision thereof, shall not be considered an order within the meaning of this section.

PROVISIONS APPLICABLE TO AMENDMENTS

(17) The provisions of this section, section 8d, and section 8e applicable to orders shall be applicable to amendments to orders: Provided, That notice of a hearing upon a proposed amendment to any order issued pursuant to section 8c, given not less than three days prior to the date fixed for such hearing, shall be deemed due notice thereof.

Milk Prices

(18) *The Secretary of Agriculture; prior to prescribing any term in any marketing agreement or order, or amendment thereto, relating to milk or its products, if such term is to fix minimum prices to be paid to producers or associations of producers, or prior to modifying the price fixed in any such term, shall ascertain, in accordance with section 2 and section 8e, the prices that will give such commodities a purchasing power equivalent to their purchasing power during the base period. The level of prices which it is declared to be the policy of Congress to establish in section 2 and section 8e shall, for the purposes of such agreement, order, or amendment, be such level as will reflect the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand, for milk or its products in the marketing area to which the contemplated marketing agreement, order, or amendment relates. Whenever the Secretary finds, upon the basis of the evidence adduced at the hearing required by section 8b or 8c, as the case may be, that the prices that will give such commodities a purchasing power equivalent to their purchasing power during the base period as determined pursuant to section 2 and section 8e are not reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk and its products in the marketing area to which the contemplated agreement, order, or amendment relates, he shall fix such prices as he finds will reflect such factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest. Thereafter, as the Secretary finds necessary on account of changed circumstances, he shall, after due notice and opportunity for hearing, make adjustments in such prices.¹⁵*

¹⁵ This italicized subsection was added by sec. 2 (f) of the Agricultural Marketing Agreement Act of 1937.

PRODUCER REFERENDUM

(19) *For the purpose of ascertaining whether the issuance of an order is approved or favored by producers, as required under the applicable provisions of this title, the Secretary may conduct a referendum among producers. The requirements of approval or favor under any such provision shall be held to be complied with if, of the total number of producers, or the total volume of production, as the case may be, represented in such referendum, the percentage approving or favoring is equal to or in excess of the percentage required under such provision. Nothing in this subsection shall be construed as limiting representation by cooperative associations as provided in subsection (12).¹⁶*

(f) Section 8d (relating to books and records);

BOOKS AND RECORDS

SEC. 8d. (1) All parties to any marketing agreement, and all handlers subject to an order, shall severally, from time to time, upon the request of the Secretary, to furnish him with such information as he finds to be necessary to enable him to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated the declared policy of this title, and with such information as he finds to be necessary to determine whether or not there has been any abuse of the privilege of exemptions from the anti-trust laws. Such information shall be furnished in accordance with forms of reports to be prescribed by the Secretary. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this subsection, or for the purpose of obtaining the information required in any such report, where it has been requested and has not been furnished, the Secretary is hereby authorized to examine such books, papers, records, copies of income-tax reports, accounts, correspondence, contracts, documents, or memoranda, as he deems relevant and which are within the control (1) of any such party to such marketing agreement, or any such handler, from whom such report was requested or (2) of any person having, either directly or indirectly, actual or legal control of or over such party or such handler or (3) of any subsidiary of any such party, handler, or person.

(2) Notwithstanding the provisions of section 7, all information furnished to or acquired by the Secretary of Agriculture pursuant to this section shall be kept confidential by all officers and employees of the Department of Agriculture and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which he or any officer of the United States is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (A) the issuance of general statements based upon the reports of a num-

¹⁶This italicized subsection was added by sec. 2 (f) of the Agricultural Marketing Agreement act of 1937.

ber of parties to a marketing agreement or of handlers subject to an order, which statements do not identify the information furnished by any person, or (B) the publication by direction of the Secretary, of the name of any person violating any marketing agreement or any order, together with a statement of the particular provisions of the marketing agreement or order violated by such person. Any such officer or employee violating the provisions of this section shall upon conviction be subject to a fine of not more than \$1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office.

(g) Section 8e (relating to determination of base period);

DETERMINATION OF BASE PERIOD

SEC. 8e. In connection with the making of any marketing agreement or the issuance of any order, if the Secretary finds and proclaims that, as to any commodity specified in such marketing agreement or order, the purchasing power during the base period specified for such commodity in section 2 of this title cannot be satisfactorily determined from available statistics of the Department of Agriculture, the base period, for the purposes of such marketing agreement or order, shall be the post-war period, August 1919-July 1929, or all that portion thereof for which the Secretary finds and proclaims that the purchasing power of such commodity can be satisfactorily determined from available statistics of the Department of Agriculture.

(h) Section 10 (a), (b) (2), (c), (f), (g), (h), and (i) (miscellaneous provisions);

MISCELLANEOUS

SEC. 10. (a) The Secretary of Agriculture may appoint such officers and employees, subject to the provisions of the Classification Act of 1923 and Acts amendatory thereof, and such experts as are necessary to execute the functions vested in him by this title; and the Secretary may make such appointments without regard to the civil service laws or regulations: Provided, That no salary in excess of \$10,000 per annum shall be paid to any officer, employee, or expert of the Agricultural Adjustment Administration, which the Secretary shall establish in the Department of Agriculture for the administration of the functions vested in him by this title: And provided further, That the State Administrator appointed to administer this Act in each State shall be appointed by the President, by and with the advice and consent of the Senate. Title II of the Act entitled "An Act to maintain the credit of the United States Government", approved March 20, 1933, to the extent that it provides for the impoundment of appropriations on account of reductions in compensation, shall not operate to require such impoundment under appropriations contained in this Act.

(b) (2)¹⁷ Each order issued by the Secretary under this title shall provide that each handler subject thereto shall pay to any authority

¹⁷ Sec. 10 (b) (2) of the Agricultural Adjustment Act, as amended.

or agency established under such order such handler's pro rata share (as approved by the Secretary) of such expenses as the Secretary may find will necessarily be incurred by such authority or agency, during any period specified by him, for the maintenance and functioning of such authority or agency, other than expenses incurred in receiving, handling, holding, or disposing of any quantity of a commodity received, handled, held, or disposed of by such authority or agency for the benefit or account of persons other than handlers subject to such order. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the agricultural commodity or product thereof covered by such order which is distributed, processed, or shipped by such cooperative association of producers. Any such authority or agency may maintain in its own name, or in the names of its members, a suit against any handler subject to an order for the collection of such handler's pro rata share of expenses. The several District Courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy.

(c) The Secretary of Agriculture is authorized, with the approval of the President, to make such regulations with the force and effect of law as may be necessary to carry out the powers vested in him by this title.¹⁵ Any violation of any regulation shall be subject to such penalty, not in excess of \$100, as may be provided therein.

(f) The provisions of this title shall be applicable to the United States and its possessions, except the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam; except that, in the case of sugar beets and sugarcane, the President, if he finds it necessary in order to effectuate the declared policy of this Act, is authorized by proclamation to make the provisions of this title applicable to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam.¹⁶

(g) No person shall, while acting in any official capacity in the administration of this title, speculate, directly or indirectly, in any agricultural commodity or product thereof, to which this title applies, or in contracts relating thereto, or in the stock or membership interests of any association or corporation engaged in handling, processing, or disposing of any such commodity or product. Any person violating this subsection shall upon conviction thereof be fined not more than \$10,000 or imprisoned not more than two years, or both.

(h) For the efficient administration of the provisions of part 2 of this title, the provisions, including penalties, of sections 8, 9, and 10 of the Federal Trade Commission Act, approved September 26, 1914, are made applicable to the jurisdiction, powers, and duties of the Secretary in administering the provisions of this title and to any

¹⁵ Sec. 2 (g) of the Agricultural Marketing Agreement Act of 1937 deletes the following: "including regulations establishing conversion factors for any commodity and article processed therefrom to determine the amount of tax imposed or refunds to be made with respect thereto".

¹⁶ Sec. 2 (h) of the Agricultural Marketing Agreement Act of 1937 deletes the sentence: "The President is authorized to attach by Executive order any or all such possessions to any internal-revenue collection district for the purpose of carrying out the provisions of this title with respect to the collection of taxes".

person subject to the provisions of this title, whether or not a corporation. Hearings authorized or required under this title shall be conducted by the Secretary of Agriculture or such officer or employee of the Department as he may designate for the purpose. The Secretary may report any violation of any agreement entered into under part 2 of this title to the Attorney General of the United States, who shall cause appropriate proceedings to enforce such agreement to be commenced and prosecuted in the proper courts of the United States without delay.

(i) The Secretary of Agriculture upon the request of the duly constituted authorities of any State is directed, in order to effectuate the declared policy of this title and in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof, to confer with and hold joint hearings with the duly constituted authorities of any State, and is authorized to cooperate with such authorities; to accept and utilize, with the consent of the State, such State and local officers and employees as may be necessary; to avail himself of the records and facilities of such authorities; to issue orders (subject to the provisions of section 8c) complementary to orders or other regulations issued by such authorities; and to make available to such State authorities the records and facilities of the Department of Agriculture: Provided, That information furnished to the Secretary of Agriculture pursuant to section 8d (1) hereof shall be made available only to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities, and then only upon a written agreement by such authorities that the information so furnished shall be kept confidential by them in a manner similar to that required of Federal officers and employees under the provisions of section 8d (2) hereof.

(j) The term "interstate or foreign commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia. For the purpose of this Act (but in nowise limiting the foregoing definition) a marketing transaction in respect to an agricultural commodity or the product thereof shall be considered in interstate or foreign commerce if such commodity or product is part of that current of interstate or foreign commerce usual in the handling of the commodity or product whereby they, or either of them, are sent from one State to end their transit, after purchase, in another, including all cases where purchase or sale is either for shipment to another State or for the processing within the State and the shipment outside the State of the products so processed. Agricultural commodities or products thereof normally in such current of interstate or foreign commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. As used herein, the word "State" includes

*Territory, the District of Columbia, possession of the United States, and foreign nations.*²⁰

(i) Section 12 (a) and (c) (relating to appropriation and expense);

APPROPRIATION

SEC. 12. (a) There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$100,000,000 to be available to the Secretary of Agriculture for administrative expenses under this title and for payments authorized to be made under section 8. Such sum shall remain available until expended.

To enable the Secretary of Agriculture to finance, under such terms and conditions as he may prescribe, surplus reductions²¹ with respect to the dairy- and beef-cattle industries, and to carry out any of the purposes described in subsections (a) and (b) of this section (12) and to support and balance the market for the dairy and beef cattle industries, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$200,000,000; Provided, That not more than 60 per centum of such amount shall be used for either of such industries.

(c) The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books and book of reference, for contract stenographic reporting services, and for printing and paper in addition to allotments under the existing law. The Secretary of Agriculture shall transfer to the Treasury Department, and is authorized to transfer to other agencies, out of funds available for administrative expenses under this title, such sums as are required to pay administrative expenses incurred and refunds made by such department or agencies in the administration of this title.

(j) Section 14 (relating to separability);

SEPARABILITY OF PROVISIONS

SEC. 14. If any provision of this title is declared unconstitutional, or the applicability thereof to any person, circumstance, or commodity is held invalid the validity of the remainder of this title and the applicability thereof to other persons, circumstances, or commodities shall not be affected thereby.

(k) Section 22 (relating to imports);

IMPORTS

SEC. 22 (a) Whenever the President has reason to believe that any one or more articles are being imported into the United States under such conditions and in sufficient quantities as to render or tend

²⁰ This italicized subsection was added by sec. 2 (ii) of the Agricultural Marketing Agreement Act of 1937.

²¹ Sec. 2 (j) of the Agricultural Marketing Agreement Act of 1937 deletes the words: "and production adjustments".

to render ineffective or materially interfere with any program or operation undertaken, or to reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which any program is in operation, under this title, or the Soil Conservation and Domestic Allotment Act, as amended, he shall cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties and shall be conducted subject to such regulations as the President shall specify.

(b) If, on the basis of such investigation and report to him of findings and recommendations made in connection therewith, the President finds the existence of such facts, he shall by proclamation impose such limitations on the total quantities of any article or articles which may be imported as he finds and declares shown by such investigation to be necessary to prescribe in order that the entry of such article or articles will not render or tend to render ineffective or materially interfere with any program or operation undertaken, or will not reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which any program is in operation, under this title or the Soil Conservation and Domestic Allotment Act, as amended: Provided, That no limitation shall be imposed on the total quantity of any article which may be imported from any country which reduces such permissible total quantity to less than 50 per centum of the average annual quantity of such article which was imported from such country during the period from July 1, 1928, to June 30, 1933, both dates inclusive.

(c) No import restriction proclaimed by the President under this section nor any revocation, suspension, or modification thereof shall become effective until fifteen days after the date of such proclamation, revocation, suspension, or modification.

(d) Any decision of the President as to facts under this section shall be final.

(e) After investigation, report, finding, and declaration in the manner provided in the case of a proclamation issued pursuant to subsection (b) of this section, any proclamation or provision of such proclamation may be suspended by the President whenever he finds that the circumstances requiring the proclamation or provision thereof no longer exists, or may be modified by the President whenever he finds that changed circumstances require such modification to carry out the purposes of this section.²²

Sec. 2. The following provisions, reenacted in section 1 of this act, are amended as follows:²³

Sec. 3. (a) The Secretary of Agriculture, or such officer or employee of the Department of Agriculture as may be designated

²² Sec. 5 of Public. No. 461, 74th Cong., approved February 29, 1936, amended sec. 22 of the Agricultural Adjustment Act, as amended, by inserting after the words "this title," wherever they appeared, the words "or the Soil Conservation and Domestic Allotment Act, as amended,"; and by deleting the words "an adjustment" whenever they appeared, and inserting in lieu thereof the word "any."

²³ Subsections (a) to (j) inclusive, of section 2 of the Agricultural Marketing Agreement Act of 1937 are incorporated in the preceding text and in the footnotes.

by him, upon written application of any cooperative association, incorporated or otherwise, which is in good faith owned or controlled by producers or organizations thereof, of milk or its products, and which is bona fide engaged in collective processing or preparing for market or handling or marketing (in the current of interstate or foreign commerce, as defined by paragraph (i) of section 2 of this act), milk or its products, may mediate and, with the consent of all parties, shall arbitrate if the Secretary has reason to believe that the declared policy of the Agricultural Adjustment Act, as amended, would be effectuated thereby, bona fide disputes, between such associations and the purchasers or handlers or processors or distributors of milk or its products, as to terms and conditions of the sale of milk or its products. The power to arbitrate under this section shall apply only to such subjects of the term or condition in dispute as could be regulated under the provisions of the Agricultural Adjustment Act, as amended, relating to orders for milk and its products.

(b) Meetings held pursuant to this section shall be conducted subject to such rules and regulations as the Secretary may prescribe.

(c) No award or agreement resulting from any such arbitration or mediation shall be effective unless and until approved by the Secretary of Agriculture, or such officer or employee of the Department of Agriculture as may be designated by him, and shall not be approved if it permits any unlawful trade practice or any unfair method of competition.

(d) No meeting so held and no award or agreement so approved shall be deemed to be in violation of any of the antitrust laws of the United States.

Sec. 4. Nothing in this act shall be construed as invalidating any marketing agreement, license, or order, or any regulation relating to, or any provision of, or any act of the Secretary of Agriculture in connection with, any such agreement, license, or order which has been executed, issued, approved, or done under the Agricultural Adjustment Act, or any amendment thereof, but such marketing agreements, licenses, orders, regulations, provisions, and acts are hereby expressly ratified, legalized, and confirmed.

Sec. 5. No processing taxes or compensating taxes shall be levied or collected under the Agricultural Adjustment Act, as amended. Except as provided in the preceding sentence, nothing in this act shall be construed as affecting provisions of the Agricultural Adjustment Act, as amended, other than those enumerated in section 1. The provisions so enumerated shall apply in accordance with their terms (as amended by this act) to the provisions of the Agricultural Adjustment Act, this act, and other provisions of law to which they have been heretofore made applicable.

Sec. 6. This act may be cited as the "Agricultural Marketing Agreement Act of 1937."

BRIEF FOR THE RESPONDENT IN OPPOSITION

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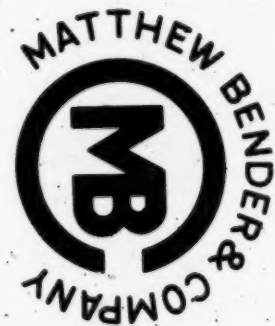
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In the Supreme Court of the United States

OCTOBER TERM 1943

No. 211

**DELBERT O. STARK, A. F. STRATTON, A. R. DENTON,
G. STEBBINS AND F. WALSH, PETITIONERS**

v.

**CLAUDE R. WICKARD, SECRETARY OF AGRICULTURE
OF THE UNITED STATES**

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA**

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia (R. 67-71) is not yet reported.

JURISDICTION

The judgment of the court below was entered on June 14, 1943 (R. 72). The petition for a writ of certiorari was filed on July 29, 1943. The jurisdiction of this Court is invoked under Section

240(a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. Sec. 347).

QUESTION PRESENTED

Whether milk producers have standing to maintain an action to enjoin the Secretary of Agriculture from carrying out provisions of a milk order which they allege are unauthorized under the Agricultural Marketing Agreement Act of 1937 and claim have the effect of reducing the minimum prices to which they are entitled under the Act.

STATUTE AND MILK ORDER INVOLVED

The statute involved is the Act of May 12, 1933 (48 Stat. 31), as amended May 9, 1934 (48 Stat. 672), as further amended August 24, 1935 (49 Stat. 750), and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246, 7 U. S. C. Sec. 601 *et seq.*). An annotated compilation of the Act is contained in the record (R. 31-49). The Order involved is Order No. 4, regulating the handling of milk in the Greater Boston Marketing Area, as amended July 28, 1941, effective August 1, 1941, issued by the Secretary of Agriculture (7 C. F. R., Chap. IX, Sec. 904; 6 Fed. Reg. 3762). A copy of the Order as amended is set forth in the record (R. 51-65).

STATEMENT

On September 22, 1941, petitioners, each suing in his capacity as a milk producer, filed a complaint

in the District Court for the District of Columbia seeking to enjoin respondent from certifying the qualification of any cooperative association of producers to receive payments under Section 904.9 of the Order, and praying that the court declare Sections 904.9 (a) to (d) and 904.7 (b) (5) of the Order illegal and void (R. 6-13, 5). Respondent answered alleging as his first defense that the complaint failed to state a claim upon which relief could be granted and praying that the complaint be dismissed (R. 20-23). On the application of petitioners the case came on for preliminary hearing on the first defense. The District Court sustained the defense and dismissed the complaint (R. 24) on the ground that petitioners had no standing to sue (R. 26-27). The Court of Appeals affirmed on the same ground (R. 72, 67-71):

The Order.—The relevant provisions of the Order may be summarized as follows:

Section 904.4 establishes minimum prices to be paid by handlers to producers according to the use to which the milk is put (R. 54-56). Section 904.7 prescribes the method by which the Market Administrator shall compute, for each delivery period, the value of the milk sold or used by each handler, and the uniform blended price to be paid to producers (R. 58-59). To obtain the value of milk sold or used by each handler, the Market Administrator is to multiply the quantity of milk sold or used by him in each class by the price applicable

to that class under Section 904.4, and add the totals. The uniform price to be paid producers is to be determined by adding together the value of all milk sold or used by all handlers in the area, making certain adjustments and deductions, and dividing the result by the total quantity of milk handled in the area.

One of the deductions permitted in determining the uniform price to producers (Section 904.7.(b) (5)) is for payments made to cooperatives pursuant to Section 904.9 (R. 62-64). That Section provides that any cooperative association which the Secretary of Agriculture decides meets the stated qualifications shall be entitled to receive specified payments from the Market Administrator on milk received from its members. In order that a cooperative qualify for such payments, the Secretary must find it, *inter alia* (R. 62-63)—

* * * to be systematically checking the weights and tests of milk delivered by its members to plants other than those which may be operated by itself; to guarantee payments to its producers; to be maintaining, either individually or in collaboration with other qualified cooperative associations, a competent staff for dealing with marketing problems and providing information to its members with whom close working relationships are constantly maintained; to be collaborating with other similar associations in activities incident to the maintenance and strengthening of collective bar-

gaining by producers and the operation of a plan of uniform pricing of milk to handlers; * * *

The Secretary characterizes these payments as made to cooperatives "performing certain marketing services" (R. 52). It is this deduction of which petitioners complain.

Section 904.8 (b) (1) requires all handlers to pay producers not less than the uniform price computed pursuant to Section 904.7 (R. 60). However, the value of milk sold or used by each handler may well vary from the uniform price required to be paid to producers, since the handler's value is based on the uses to which the milk handled by him is put, while the uniform price of milk is based on the uses to which the milk of all handlers in the area is put. To adjust this variation Section 904.8 (b) (3) establishes what is commonly known as the producer-settlement or equalization fund in the hands of the Market Administrator (R. 60). Each handler is required to pay to, or receive from, this fund the amount by which his payments to producers as required by the Order are less than, or exceed, the value of the milk handled by him. The payments made to qualified cooperative associations by the Market Administrator under Section 904.9 come from this fund.

The complaint.—The material allegations of the complaint are as follows (R. 6-13): Petitioners produce and sell milk to handlers who resell in

the Greater Boston Marketing Area as defined in the Order. They bring this suit for themselves and for the benefit of all others similarly situated.

Petitioners, as well as all other producers whose milk is marketed pursuant to the Order, are paid the uniform price as computed under Section 904.7. On September 12, 1941, the Market Administrator announced the uniform price applicable to the preceding delivery period. This announcement discloses that, in computing the uniform price by dividing the use value of all the milk by the total number of pounds, \$15,575.31 was deducted (from the total value of over \$2,500,000 (R. 19)) for payments made to qualified cooperative associations. Similar deductions will be made for future delivery periods, and additional deductions will be made as more cooperative associations become qualified. This will result in a lower blended price to producers causing annual losses to the individual petitioners ranging from \$10.50 to more than \$39.00 and collectively to petitioners and over 6,000 others similarly situated of more than \$60,000 per year.

Petitioners claim that Sections 904.9 (a) to (d) and 904.7 (b) (5) of the Order are not authorized by the Act and are illegal and void.

ARGUMENT

Although petitioners also seek to argue the merits of their case, the courts below decided only that they had no standing to sue. Since this is the only question on which they can rely in seeking

certiorari, it seems unnecessary to discuss the merits of the case here.

We think it clear that both courts below correctly decided that the petitioners had no standing to sue. One can challenge the validity of an act or order in a suit against a governmental agent only where the conduct of the official invades a legal right—"one of property, one arising out of contract, one protected against tortious invasion, or one founded on a statute which confers a privilege." *Tennessee Power Co. v. T. V. A.*, 306 U. S. 118, 137-138. In their petition for certiorari petitioners claim that the act of the Secretary invades both contract and property rights. * They disclaim (pp. 8-9) any right founded on a statutory privilege, contending that the Court of Appeals' view that this was their argument was a misconception.

Petitioners assert that the Secretary has interfered with the performance of contracts for the purchase and sale of milk by preventing handlers from paying the "full" price to producers (Pet. 8-12). The complaint does not allege, however, that petitioners had contracts under which they were to receive more than they were actually paid. Furthermore, the Order does not prevent petitioners from making or performing contracts which will give them more than the uniform prices; only minimum prices are established (R. 54-55).

Petitioners also contend that in making deductions for payments to cooperatives the Market Ad-

administrator has improperly taken into his possession through the producer-settlement fund money which rightfully belongs to them, that they have an equitable interest in this money, and that this suit is therefore brought to vindicate a property right (Pet. 12-14). Petitioners, however, have no legal or equitable interest in the money in this fund. They receive payment for their milk from the handlers, not from the fund, at not less than the uniform price. They put nothing into the fund and they are entitled to take nothing out. It is the handlers who make payments into and withdraw money from the fund, as a means of equalizing, *inter sese*, the amounts which they pay in accordance with the use to which the milk purchased by each handler is put. The deductions for payments to cooperatives can affect petitioners only because they are taken into account in the computations upon which the uniform prices are based. Although the cooperatives are paid from the settlement fund, the producers do not receive their uniform price from that fund, and, accordingly, have no property interest in it.¹

¹ It is true that this Court held in *United States v. Rock Royal Co-op.*, 307 U. S. 533, 561, that the handlers have no sufficient interest in the fund to give them standing to complain concerning the payments to cooperatives. It does not follow, however, that this gives the producers a right to complain. Cf. *Dayton-Goose Creek Ry v. United States*, 263 U. S. 456, 484. Their claim to a property right in the fund has even less basis than that of the handlers.

Nor does the Order deprive petitioners of any other property right. It does not take away or affect their right in the milk which they produce. It does not reduce or fix the price at which they may sell. Its purpose and effect, is to benefit producers, as well as the public generally, by guaranteeing the producers a minimum price for their milk.

Although petitioners now expressly disclaim any such contention, the court of appeals assumed that the only possible basis for their claim of standing to sue could be a right "founded on a statute which confers a privilege" (R. 69). Although the minimum price provisions were intended to benefit producers, it seems clear that Congress was not intending to confer upon producers standing to challenge the prices fixed if not high enough. In the first place, the act and the Order do not require producers to do or refrain from doing anything.

* Petitioners state (Pet., p. 8) :

"* * * the court thereafter misconceived of the petitioners' rights to receive the minimum prices in their contracts with handlers without unlawful interference by the Secretary, and of petitioners' claim to standing to protect their own property interest as equitable owners of the Producer Settlement Fund, as assuming a right "founded on a statute which confers a privilege"."

(Pet. p. 9) : "Obviously, the petitioners' rights to receive the minimum prices under their contracts should not be deemed as founded on a statute which confers a privilege" * * *

Section 8c (13) (B) of the Act provides expressly that "No order * * * shall be applicable to any producer in his capacity as a producer." Thus the fixing of minimum prices cannot injure the producer.³

That Congress did not intend to vest in the producer any legal right to attack the prices established is further indicated by the administrative machinery created under which handlers, and handlers alone, are permitted to attack the validity of the Secretary's orders, both administratively and in the courts by way of judicial review. (Section 8c (15) (R. 41)). The granting of this right to handlers without giving any such right to producers manifests the intention of Congress to confer a benefit upon producers in the form of minimum prices without giving them the right to challenge the action of the Secretary on the ground that the benefits given by him were not all that the statute intended.

Congress has provided other means for the protection of the producers' interests. Producers

³ The case thus differs from *Associated Industries v. Ickes*, 134 F. (2d) 694 (C. C. A. 2), certiorari granted, No. 61, since the consumer-purchasers there involved, even though not subject to the sanctions of the Coal Act, suffered a financial loss from the establishment of minimum prices. Furthermore, that case held that the consumers' standing to sue was based upon the express language of the review provisions of the Coal Act. A motion to reverse on grounds of mootness is now pending in the *Associated Industries* case.

may appear at the public hearings which the Secretary must hold before issuing or amending an order (Section 8c (3) (R. 34)). No order can be issued without approval by two-thirds of the producers (Section 8c (8) (9) (R. 38-39)). The Secretary must terminate the order when he finds that the majority of the producers favor termination (Section 8c (16) (B) (R. 41-42)). These provisions, for general producer approval of a program, may be contrasted with those permitting all affected handlers to challenge the order both before the Secretary and in court.

Petitioners contend (Pet. 7, 14) that they are affected by the action complained of in that the deductions may result in lower uniform prices to the producers. See *United States v. Rock Royal Co-op.*, 307 U. S. 533, 560-561. However, "it is by now clear that neither damage nor loss of income in consequence of the action of Government, which is not an invasion of recognized legal rights, is in itself a source of legal rights in the absence of constitutional legislation recognizing it as such." *Perkins v. Lukens Steel Co.*, 310 U. S. 113, 125; *City of Atlanta v. Ickes*, 308 U. S. 517; *Alabama Power Co. v. Ickes*, 302 U. S. 464, 479. Here there has been no invasion of recognized legal rights; and there is no legislation recognizing

the alleged damage to producers as a source of legal rights.

Furthermore, we believe that petitioners' complaint shows that their interest in this matter is shared with so many others, is so indeterminable, and is so remote and uncertain that it affords no basis for the exercise of the powers of a court of equity. Cf. *Massachusetts v. Mellon*, 262 U. S. 447, 487-489. Petitioners' assertion that the payments to ~~cooperatives~~ will result in loss to them is based on the assumption that all other factors considered in the computation of the uniform price would be the same if no such payments were made. This assumption is unjustified. The payments to cooperatives, which the Secretary has found effectuate the declared policy of the Act, are made for services performed by them which benefit all producers in the area and not merely members of the cooperatives.⁴ The complaint contains no

⁴ The services for which deductions are allowed are described in the legislative history of a bill containing a clarifying amendment on this point. S. 3426, 76th Cong., 3d Sess., Section 4 (referred to at p. 15 of the petition). This amendment was described in the Senate Committee Report (No. 1719, 76th Cong., 3d Sess., p. 8) as covering services "which are identifiable as benefiting all producers with a reasonable degree of equality as distinguished from services, the benefits of which are limited primarily to members of a particular cooperative association." See to the same effect, Hearings, Subcommittee of Senate Committee on Agriculture and Forestry on S. 3426, 76th Cong., 3d Sess., pp. 52-53, 75. The

allegations indicating that the producers as a whole do not obtain a higher uniform price as a result of such marketing services. A simple mathematical calculation will show that on the basis of the actual figures for the month of August 1941 (R. 19), if the payments to cooperatives induced marketing activities which raised the valuation of the total milk sold in the market by no more than six-tenths of one percent, the uniform price would have been higher than it would have been without such payments. Thus on the allegations of the complaint the injury to petitioners is so speculative and uncertain as not to warrant the intervention of a court of equity.

services are described in 86 Cong. Rec. 12258-12259. The Senate report and the explanation to Congress (*ibid.*) shows that the object of the amendment proposed was to "establish more explicit standards," thus avoiding the question of delegation of power, to guide the Secretary in making payments which he was already authorized to make under his general power to prescribe minimum prices and the manner of paying producers. S. 3426, which contained a large number of other amendments, passed the Senate (86 Cong. Rec. 12266), but died in the House committee; although other amendments had been vigorously opposed before the Senate Committee, this particular amendment had met with no objection (86 Cong. Rec. 12256). In view of the fact that this amendment was designed to clarify and not to change the law, the failure of the House to pass S. 3426 does not manifest a congressional understanding that such payments to cooperatives were not permissible under the law as it previously stood.

CONCLUSION

The decision of the court below is correct and is in accord with the rulings of this Court. Likewise it is consistent with other decisions in the lower federal courts.⁵ It is, therefore, respectfully submitted that the petition for a writ of certiorari should be denied.

✓ CHARLES FAHY,

Solicitor General.

✓ WENDELL BERGE,

Assistant Attorney General.

✓ KENNETH B. KIMBLE,

✓ J. STEPHEN DOYLE, JR.,

✓ ROBERT L. STERN,

Special Assistants to the Attorney General,

✓ MARGARET H. BRASS,

Special Attorney.

SEPTEMBER 1943

⁵ *Wallace v. Gandy*, 95 F. 2d 364 (App. D. C. 1938); *Massachusetts Farmers D. Committee v. United States*, 26 F. Supp. 941 (D. Mass. 1939).

FILE COPY

INSTRUCTIONS TO THE JURY

DELIVERED BY THE COURT TO THE JURY IN THE CASE OF
TOMMY L. BROWN AND R. W. BROWN, PETITIONERS

CLAUDE B. BROWN, SECRETARY OF AGRICULTURE
OF THE UNITED STATES AND MARVIN BROWN, WAR
FOOD ADMINISTRATOR OF THE UNITED STATES

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT
OF APPEALS FOR THE DISTRICT OF COLUMBIA

READ FOR THE JURY

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 211

DELBERT O. STARK, A. F. STRATTON, A. R. DENTON,
G. STEBBINS AND F. WALSH, PETITIONERS

v.

CLAUDE R. WICKARD, SECRETARY OF AGRICULTURE
OF THE UNITED STATES, AND MARVIN JONES, WAR
FOOD ADMINISTRATOR OF THE UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE DISTRICT OF COLUMBIA.

BRIEF FOR THE RESPONDENTS

OPINION BELOW

The district court did not render an opinion. The opinion of the United States Court of Appeals for the District of Columbia (R. 67-73) is reported in 136 F. (2d) 786.

JURISDICTION

The judgment of the court below was entered on June 14, 1943 (R. 73). Petition for certiorari was filed on July 29, 1943, and was allowed on October

11, 1943 (R. 75). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C., sec. 347).

QUESTION PRESENTED

Whether milk producers have standing to enjoin the Secretary of Agriculture from carrying out certain provisions of an order issued by him under the Agricultural Marketing Agreement Act of 1937 where the basis of the suit is that provisions of the order asserted not to be authorized by the statute reduce the minimum prices to which the producers would otherwise be entitled under the terms of the order.¹

STATUTE AND ADMINISTRATIVE REGULATION INVOLVED

The statute involved is the Agricultural Marketing Agreement Act of 1937, 50 Stat. 246, 7 U. S. C., sec. 601 *et seq.*, which reenacted and amended the Agricultural Adjustment Act as amended (48 Stat. 31; 48 Stat. 672; 49 Stat. 750). An annotated compilation of the Agricultural Marketing Agreement Act of 1937 is contained in the record (R. 31-49). The administrative regulation involved is an order issued under said Act

¹ Petitioners' brief does not present or discuss a further question presented in the petition for certiorari—namely, whether the statute authorizes the Secretary of Agriculture to make the payments to cooperative associations provided for by Section 904.9 of the Secretary's order. This question will therefore not be argued herein. Cf. second paragraph of note 5, p. 8, *infra*.

by the Secretary of Agriculture on July 28, 1941 (6 F. R. 3762), and set forth in full in the record (R. 51-65).

STATEMENT

Each of the five petitioners is a milk producer engaged in selling milk to handlers who sell and distribute milk in the Greater Boston Marketing Area and who, as such handlers, are subject to an order issued by the Secretary of Agriculture on July 28, 1941 (referred to herein as Order No. 4), regulating the handling of milk in the Boston area. Petitioners in this action, filed in the United States District Court for the District of Columbia against the respondent, Wickard, Secretary of Agriculture, attack the validity of Section 904.9 of Order No. 4, which authorizes the Market Administrator to make certain payments to all cooperative associations of producers which the Secretary of Agriculture has certified as eligible for such payments (R. 11). They also attack the validity of Section 904.7 (b) (5) of the order, which directs the Market Administrator to deduct these payments to cooperatives in making his computation of the minimum uniform (i. e., blended) price which handlers are required to pay to producers (*ibid.*). The relief which they prayed was that the Secretary of Agriculture be enjoined from certifying the qualification of any cooperative

² Order No. 4 is administered by a Market Administrator selected by the Secretary of Agriculture (Sec. 904.2, R. 53).

association under Section 904.9 and that Sections 904.9 (a)-(d) and 904.7 (b) (5) of the order be declared illegal and void (R. 12). Upon motion of petitioners, this Court joined Marvin Jones, War Food Administrator of the United States, as a party respondent.

Petitioners' bill of complaint alleges that none of them is a member of a cooperative association, eligible to receive the payments authorized by Section 904.9 (R. 7); that the Market Administrator, in computing the uniform price payable by handlers to producers for milk delivered in August 1941, deducted \$15,575.31 on account of payments made to cooperatives pursuant to Section 904.9 (R. 9); that similar payments to cooperatives and similar deductions in the computation of the uniform price will be made in succeeding months (R. 10); that such deductions will reduce the annual amounts paid to the individual petitioners by handlers by sums ranging from \$10.50 to more than \$39.00 and will reduce the total payments to similarly situated producers by more than \$60,000 per year (R. 10, 11). Petitioners allege that their suit is brought for themselves and for the benefit of all other persons similarly situated (R. 6) and that the Agricultural Marketing Agreement Act of 1937 affords petitioners no method of administrative relief (R. 12).

Respondent in his answer set up as a first defense that the complaint fails to state a claim upon which relief can be granted (R. 20): The district

court, acting on petitioners' motion to dismiss respondent's first defense, entered judgment sustaining such defense and dismissing the complaint (R. 24). The Court of Appeals, in affirming the judgment below, held that petitioners did not have standing to obtain review of the Secretary's order (R. 67-73). This was the only question considered by the appellate court.

The relevant provisions of Order No. 4 may be summarized as follows:

By subparagraph (1) of Section 904.8 (b) each handler is required to pay to each producer other than a new producer "not less than" the uniform or blended price computed pursuant to Section 904.7 (b) of the order (R. 60).³ The latter section (R. 59) provides that the Market Administrator shall compute a uniform price for each delivery period as follows: First, take the use-value of all milk sold or used by all handlers in the Boston marketing area, determining such use-value by adding together the total quantity of each class of milk so sold or used multiplied by the price applicable thereto as fixed by paragraphs (a), (b), and (c) of Section 904.4. Second, make certain specified additions to and deductions from the total use-value thus obtained. Third, divide the resulting sum by the total quantity of milk included in the computation.

³ The minimum uniform price required to be paid is subject to the butterfat differentials set forth in Section 904.8 (e). These differentials, and also the provisions as to new producers found in Section 904.8 (b) (2), are not material here.

Although the order thus provides that each handler shall pay each producer (except new producers) the uniform price, under the terms of the order the actual cost to the handler of the milk which he uses or sells is not the uniform price multiplied by the number of hundredweight of milk handled. The actual cost of the milk to him is determined by adding together the sums obtained by multiplying the quantity of milk of each class by the "price" applicable thereto pursuant to paragraphs (a), (b), and (c) of Section 904.4. Section 904.8 (b) (3) provides that if this sum is more than the handler's payments to producers on the basis of the uniform price, he shall pay the difference to the Market Administrator; if it is less than such payments to producers, he shall receive the difference from the Market Administrator (R. 60). This balancing or adjustment account is sometimes referred to as the producer settlement fund.

Since the actual cost of milk to handlers is determined by the values or "prices" fixed by Section 904.4 and not by the uniform price computed under Section 904.7 (b), it follows that a lower uniform price (resulting from a deduction required to be made in computing such price) decreases the price producers are entitled to receive but does not decrease or increase the actual net amount which handlers are required to pay.

One of the deductions required to be made in computing uniform price (Sec. 904.7 (b) (5)) is the payments to be made to cooperatives pursuant

to Section 904.9. It is this deduction which the petitioners seek to have adjudged invalid. Section 904.9, which determines the amount of this deduction, provides that the Market Administrator shall make certain specified payments to any cooperative association of producers which the Secretary of Agriculture determines, after investigation, to be within the conditions or qualifications therein set forth (R. 62-63).⁴ In order to become eligible for such payments the Secretary must find the cooperative, *inter alia*—

to be systematically checking the weights and tests of milk delivered by its members to plants other than those which may be operated by itself; to guarantee payments to its producers; to be maintaining, either individually or in collaboration with other qualified cooperative associations, a competent staff for dealing with marketing problems and providing information to its members with whom close working relationships are constantly maintained; to be collaborating with other similar associations in activities incident to the maintenance and strengthening of collective bargaining

⁴Paragraph (a) of the section provides that cooperatives found to be eligible by the Secretary shall be "entitled to receive" the specified payment and paragraph (b) directs the Market Administrator to make the payments authorized by paragraph (a).

The payments specified are 11½¢ per hundredweight of milk marketed by the cooperative on behalf of its members and 5¢ per hundredweight on Class I milk received from producers at a plant operated under the exclusive control of member producers and sold to proprietary handlers (R. 63).

by producers and the operation of a plant [sic] of uniform pricing of milk to handlers; * * *

The right to receive the authorized payments terminates if the Secretary finds, after opportunity for a hearing, that the cooperative has failed to meet any of the required conditions or to perform any of the specified functions.⁵

SUMMARY OF ARGUMENT

Petitioners, as producers of milk, bring this suit to enjoin the Secretary of Agriculture from carrying out provisions of a milk marketing order issued by the Secretary which require that certain payments to cooperative associations of producers be deducted in computing the uniform price which

⁵ Section 904.9 (c) requires each qualified cooperative to make reports to the Market Administrator, as requested by him, with respect to its use of such payments and the performance of any service or function set forth as the basis for such payment. Section 904.9 (d) provides that the Market Administrator shall suspend payments, upon request of the Secretary or upon his own initiative, whenever there is reason to believe that a beneficiary thereof is no longer qualified. (R. 63-64.)

Although the question of statutory authority is not argued by petitioners, it may be said that authority for the challenged provisions of the order is found in Section 8c (7) (D) of the statute (R. 37-38), which authorizes provisions "incidental to, and not inconsistent with, the terms and conditions specified in subsections (5), (6), and (7) and necessary to effectuate the other provisions of such order." The payments in question are designed to compensate the cooperatives for services which they must perform in order to be eligible for such payments, which are beneficial to the market as a whole and contribute to the successful operation of the order, and which entail material expense.

the order establishes as the minimum price to be paid to producers by handlers. Petitioners have no standing to maintain this suit because the provisions of the order of which they complain violate no legal right of petitioners. It is well settled that "neither damage nor loss of income in consequence of the action of Government, which is not an invasion of recognized legal rights, is in itself a source of legal rights" giving standing to sue. *Perkins v. Lukens Steel Co.*, 310 U. S. 113, 125.

A. The deduction on account of payments to co-operatives invades no property right of petitioners. They assert an equitable interest in the so-called producer settlement fund, but they, as producers, pay nothing into this fund and receive nothing from it. It is not a fund established or set apart for the benefit of producers. Its purpose and function are to equalize, as among handlers, certain obligations which the order imposes on them. It is clear that, under these circumstances, petitioners have no property interest, equitable or otherwise, in the producer settlement fund.

B. The deduction for payments to cooperatives invades no contract right of petitioners. No foundation for such a claim is laid by the pleadings. Petitioners do not allege that they have contracted with handlers for payment of a higher price than that received by them under the Secretary's order or that the order prevents the carrying out of any contract made by petitioners.

Petitioners' assertion of a violation of contract rights must fail for an additional reason. Neither the Secretary's order nor the statute under which it was issued interferes with petitioners' freedom to bargain with handlers for prices higher than the uniform price payable to them under the Secretary's marketing order. All that the order requires is that handlers pay to producers, as a *minimum*, the uniform price established by the order. Petitioners' lack of standing follows *a fortiori* from the cases holding that consumers may not bring suit to challenge minimum price orders (*City of Atlanta v. Ickes*, 308 U. S. 517); the legal inhibition against lower prices for consumers is not matched here by any legal inhibition against higher prices for producers.

C. There is nothing in the Agricultural Marketing Agreement Act of 1937 which supports petitioners' contention that this statute confers upon producers the right or privilege to obtain judicial review of the validity of marketing orders issued by the Secretary of Agriculture even though no legal right of the producer has been violated by the order which he attacks. Petitioners point to no provision of the statute capable of being construed as granting such a right and it is clear that the grant is not to be implied from the statute as a whole. In fact, examination of its provisions and general objectives compels the conclusion that Congress did not intend to confer upon every producer who might

be dissatisfied with the extent of the benefits which he derived from a marketing order of the Secretary the right to obtain judicial review of the Secretary's administrative action.

(1) The statute does provide for review of marketing orders, but it prescribes administrative review, followed by appeal to the courts from determinations made therein, and it confines the remedy to handlers. The handlers alone are subjected to legal obligations by the marketing orders. Congress, having explicitly dealt with the subject of judicial review, is not to be deemed to have intended to confer a further and different right of review, particularly since the review here sought would avoid the channeling through an administrative procedure which Congress evidently regarded as important.

(2) The statute makes the issuance of any marketing order dependent upon an exercise of administrative discretion not reviewable by the courts. Since Congress made the receipt of any benefits to producers a matter beyond judicial review, it can hardly have intended to subject to such review the extent of the benefits conferred under such marketing orders as the Secretary might issue.

(3) If the statute authorizes producers to attack the validity of the deduction here in question it must equally authorize producers to attack every provision of a marketing order which affects the uniform price payable to producers.

Thus the interpretation of the statute upon which petitioners must rely in order to find statutory support for the present suit would mean that producers were given by Congress the right to litigate the validity of all the major provisions of marketing orders. Such a construction, which would open wide the avenues of litigation, is not lightly to be inferred.

ARGUMENT

PETITIONERS HAVE NO STANDING TO MAINTAIN THE PRESENT SUIT

Petitioners do not question the settled rule that only a person whose "legal right" is violated by the unlawful conduct of another is entitled to maintain a suit.⁶ As this Court said in *Perkins v. Lukens Steel Co.*, 310 U. S. 113, 125, "neither damage nor loss of income in consequence of the action of Government, which is not an invasion of recognized legal rights, is in itself a source of legal rights" giving standing to sue.

Where the issue of the plaintiff's standing to sue is raised, the usual point in controversy, as here, is not the basic principle itself but whether the right asserted by the plaintiff is one which the law has protected against invasion. Concerning rights which are thus protected, this Court said in *Tennessee Power Co. v. Tennessee Valley Au-*

⁶ *Tennessee Power Co. v. Tennessee Valley Authority*, 306 U. S. 118; *Alabama Power Co. v. Ickes*, 302 U. S. 464; *Massachusetts v. Milion*, 262 U. S. 447.

thority, 306 U. S. 118, 137-138, that the right must be "one of property, one arising out of contract, one protected against tortious invasion, or one founded upon a statute which confers a privilege." The right, in other words, either must be within the class of those given protection at common law or it must be one based on an interest which has, by statute, been granted protection through court action. Otherwise, the injury of which the plaintiff complains is *damnum absque injuria* and he is without standing to sue. *Alabama Power Co. v. Ickes*, 302 U. S. 464, 479.

Petitioners contend that they have standing to sue (1) because they have a definite equitable interest in the producer settlement fund which entitles them to prevent its wrongful dissipation, (2) because the Secretary's action constitutes an illegal interference with their contractual relations with handlers, and (3) because the statute confers upon producers a privilege, intended to be enforceable by court proceedings against the Secretary of Agriculture, to receive a price for their milk computed in accordance with the terms of the statute. Petitioners apparently also urge (Br. p. 18) that even if the right which they assert does not fall within any of these categories, it nevertheless at least savors a little of each.

¹ See *Associated Industries, Inc. v. Ickes*, 134 F. (2d) 694, 700 (C.C.A. 2); order of Circuit Court of Appeals vacated by this Court on October 18, 1943, and cause remanded to determine proper disposition of case in view of expiration of the Bituminous Coal Act (No. 61, this Term).

Before considering these contentions, we emphasize the fact that neither the order nor the statute regulates in any respect the conduct of producers. Petitioners concede (Br. p. 36) that Order No. 4 does not require producers to do or not to do anything. Moreover, the statute itself under which the order is issued contains this limitation upon its regulatory scope. The Agricultural Marketing Agreement Act of 1937 provides that no order regulating the marketing of agricultural commodities "shall be applicable to any producer in his capacity as a producer" (Sec. 8c (13) (B), R. 40). The penal sanctions for violations of orders issued under Section 8c apply only to a "handler" or an officer, agent, or employee thereof (Sec. 8c (14), R. 40). And just as only handlers are subject to regulation and sanctions, so only handlers are given an administrative review, followed by court review of the Secretary's determination therein, of orders issued under Section 8c (Sec. 8c (15), R. 41). Petitioners are therefore in the position of asking a court to set aside as invalid certain action taken by the Secretary of Agriculture in administering a statute when neither the action of which petitioners complain nor the statute itself imposes any restriction or requirement upon them.

* Handlers are defined as "processors, associations of producers, and others engaged in the handling of" certain specified agricultural commodities or products (Sec. 8c (1), R. 33).

It has been uniformly ruled that since neither the Agricultural Marketing Agreement Act of 1937 nor marketing orders issued under it requires producers to do, or to refrain from doing, anything, they have no standing to challenge the validity of such orders.⁹

A. PETITIONERS HAVE NO INTEREST IN THE PRODUCER SETTLEMENT FUND WHICH GIVES THEM STANDING TO MAINTAIN THIS SUIT

Petitioners contend that they are the real beneficiaries of the producer-settlement fund and that their property rights are therefore invaded if the Market Administrator makes payments out of this fund not authorized by statute. But we submit that petitioners wholly fail to show that they have any legally protected interest in the producer settlement fund. They pay nothing into it and receive nothing from it.

That producers receive nothing from the fund is easily demonstrated. The Market Administrator makes no payment to them. The producers are paid the uniform price by handlers and the amounts they receive are not determined by the amount which the handler to whom the milk is sold owes the fund or is entitled to receive from it. The complaint in the present case is that the pro-

⁹ *Wallace v. Garley*, 95 F. (2d) 364 (App. D. C.); *Massachusetts Farmers Defense Committee v. United States*, 26 F. Supp. 941, 943 (D. Mass.); *United States v. Superior Court*, 19 Calif. (2d) 189, 197-198 (1941).

ducer-settlement fund is depleted by an unauthorized deduction on account of certain payments to cooperatives. The lack of interest which producers have in the amount in the fund is further shown by the fact that if payments to cooperatives cease, the uniform price will be increased, and since handlers' payments to the settlement fund are determined by first crediting them with their payments of the uniform price, elimination of the deduction would *decrease* the amount paid into the fund.¹⁰ In other words, so far as the fund itself is concerned, the action of which petitioners complain augments rather than depletes the settlement fund.

Petitioners point out (Br. pp. 30-32) that in *H. P. Hood & Sons, Inc. v. United States*, 307 U. S. 588, the final decree of the district court, which this Court affirmed, directed that certain monies paid into the registry of the court during the period of litigation should be distributed to producers. The milk order in that case required handlers to deduct 2c per hundredweight from the uniform price payable to producers and to pay this amount to the Market Administrator to be

¹⁰ The above statement is illustrated by the examples in petitioners' brief (pp. 15-17) of the operation of the producer settlement fund. Under the figures there employed, the amount paid into the fund is \$45,000 if payments to cooperatives are deducted in computing uniform prices whereas the amount paid into the fund is only \$37,500 if such deduction is eliminated.

expended by him through a separate fund established to defray the cost of furnishing market information to producers and for verifying weights, sampling and testing of milk purchased from producers. By an earlier court order the handlers were required, during the period of litigation, to pay the 2¢ into court rather than to the Market Administrator and he had therefore been unable currently to furnish the contemplated service to producers. Distribution among producers was the obvious and proper disposition to be made of money which had been withheld from them for the purpose of expenditure for the mutual benefit of all the producers, but which expenditure had been frustrated by the litigation.

The present producer settlement fund stands on an entirely different footing. It is not a sum definitely set apart or one earmarked for expenditure on behalf of all producers. Its major function is to equalize, as among handlers, the payments which each makes to producers based on uniform price and the actual net payment required of him by the order based on the use to which his milk is put. The difference in purpose and characteristics between the sum involved in the *Hood* case and the present producer settlement fund is further indicated by the fact that the 2¢ deduction in the *Hood* case was not a deduction in computing uniform price and therefore did not, under the terms of the milk order in that case, come into

the hands of the Market Administrator through the machinery of the producer settlement fund.¹¹

The cases cited by petitioners do not support their claim of a property interest in the producer settlement fund. In *Santa Fe Pacific R. R. Co. v. Lane*, 244 U. S. 492, and in *Ickes v. Fox*, 300 U. S. 82, the plaintiffs had standing to sue because rights to property were threatened with injury by unauthorized acts of a public official.¹² *Mellon v. Orinoco Iron Co.*, 266 U. S. 121, decided only that where payment of money held in the Treasury of the United States calls for performance of a merely ministerial duty, one claiming to be the rightful payee may have that question determined in a suit to enforce the duty to pay. In *Z. & F. Assets Corp. v. Hull*, 311 U. S. 470, the plaintiffs' right to sue rested on the fact that they held awards entitling them to payment out of a fund established by an Act of Congress; and in such suit they could bring in issue the question whether unauthorized certifications of other awards were depleting the fund available for payment of their awards.¹³

¹¹ Art. VII, sec. 2; Art. VIII, sec. 1, par. 3, of order involved in *Hood* case (Record in this Court in that case, vol. II, pp. 68-69, 70).

¹² In the former case the plaintiff was suing to protect its right to public lands granted to it by an Act of Congress. The plaintiffs in the latter case were suing to protect water rights which this Court described (p. 96) as "vested property rights."

¹³ *Thompson v. Deal*, 92 F. (2d) 478 (App. D. C.), also cited by petitioners, involved the proper disposition of a fund

Petitioners cannot found their claim upon an "equitable interest" in the amount paid into the settlement fund by the handlers. The settlement fund is not maintained as a trust fund for the producers. And, as has been seen, so far from being dissipated by the action of the Secretary here complained of, the fund has been augmented by that action. From no point of view, therefore, has there been any breach of trust as against the petitioners. Their claim is, in truth, not one resting on misuse of trust funds, but one resting on an asserted miscalculation of the uniform minimum price to which they are entitled. Consequently the assertion of an equitable interest does not advance their case. They are remitted to the contention that they have standing to complain of the minimum price established, either because their contract rights have been invaded or because the statute itself confers on them an interest which is to be enforced by court action.

B. THERE IS NO ALLEGATION OR SHOWING THAT ANY CONTRACT RIGHT OF PETITIONERS HAS BEEN INVADED

The pleadings do not support the claim that the action of the respondent Secretary of Agriculture infringes upon any contract right of petitioners.

which had come into existence solely by virtue of the operation of a statute subsequently adjudged unconstitutional. The case held that those whose money had been paid into the fund for the purchase of certificates which had no value apart from the provisions of the invalid statute were entitled to the return of their money.

With respect to their relations with the handlers to whom they sell, the bill of complaint merely alleges that each petitioner "sells" to handlers subject to Order No. 4 (R. 6). The complaint therefore does not allege contracts with these handlers; it does not allege contracts with them calling for payment of a price higher than the uniform price which they receive under the terms of Order No. 4; it does not allege that the order compels or threatens any breach of contract. So far as contract rights are concerned, no allegation sufficient to show invasion of a "legal right" is set forth. *Wallace v. Ganley*, 95 F. (2d) 364 (App. D. C.).

In addition, as petitioners concede (Br. p. 39), neither the statute nor the order bars petitioners from contracting with handlers for payment of a price higher than that which the order requires handlers to pay to producers. Petitioners assert that, under the conditions created by the order, no handler would be willing to pay a price above the minimum required by Order No. 4 and that the producers' freedom to contract for the payment of such a higher price is therefore illusory. There is nothing in the record to support these assumptions and the Government is informed that competitive conditions in the Boston market inducing the payment to producers of a price above the minimum required by the order are by no means unusual.

Indeed, petitioners' lack of standing follows *a fortiori* from the cases holding that consumers may not bring suit to challenge minimum prices fixed by public authority. *City of Atlanta v. Ickes*, 308 U. S. 517. Cf. *New York City v. New York Telephone Co.*, 261 U. S. 312, 316; *Smith v. Illinois Bell Telephone Co.*, 270 U. S. 587, 592.¹⁴ In those cases the consumers are deprived of their conventional right to bargain for lower prices; to do so in the face of the order would at least involve an effort to induce violation of the law by the sellers. In the present case, on the contrary, there is no legal inhibition, whatever operating against the producers, since they and the handlers are free to contract at higher prices.

C. THE AGRICULTURAL MARKETING AGREEMENT ACT OF 1937 CONFERS UPON PETITIONERS NO RIGHT TO PROCEED AGAINST THE SECRETARY OF AGRICULTURE TO OBTAIN JUDICIAL REVIEW OF THE VALIDITY OF HIS ADMINISTRATIVE ACTION UNDER THE STATUTE

Petitioners contend that even if, under general principles, no legal right of theirs has been invaded, privileges conferred upon them by the Agricultural Marketing Agreement Act of 1937 furnish sufficient foundation for their present suit. This is so, however, only if Congress intended not

¹⁴ *Associated Industries, Inc. v. Ickes*, 134 F. (2d) 694 (C. C. A. 2), remanded on question of mootness, No. 61, present Term, presented the question whether the statutory right of appeal conferred on "aggrieved parties" to contest a minimum-price order extended to an association of consumers.

only that producers of agricultural commodities should derive the benefits accruing to them from the operation of this statute but also that these producers should be given the right to obtain judicial review of the validity of marketing orders issued thereunder. Since no language in the statute can be construed as conferring this right, it is granted only if consideration of the entire structure and purpose of the statute requires the implication of such a grant.

This Court has recently passed upon an analogous question of legislative intent in a group of cases involving the Railway Labor Act.¹⁵ In those cases the plaintiffs' standing to sue was beyond question. The Railway Labor Act confers upon railroad employees the right to bargain collectively through representatives of their own choosing and the statute makes this right enforceable by legal proceedings against private persons who interfere with exercise of the right.¹⁶ This Court held that Congress, in enacting the Railway Labor Act, intended to deprive the courts of jurisdiction to review the validity of the ad-

¹⁵ *Switchmen's Union of North America v. National Mediation Board*, No. 48, this Term; *General Committee of Adjustment of the Brotherhood of Locomotive Engineers v. Southern Pacific Co.*, Nos. 27 and 41, this Term; *General Committee of Adjustment of the Brotherhood of Locomotive Engineers v. Missouri-Kansas-Texas R. R. Co.*, No. 23, this Term; all decided November 22, 1943.

¹⁶ *Virginian Ry. Co. v. System Federation No. 40*, 300 U. S. 515; *Texas & N. O. R. R. Co. v. Brotherhood of Ry. & Steamship Clerks*, 281 U. S. 548.

ministrative determinations of the National Mediation Board and that, in a suit to obtain cancellation of such a determination, on the ground that it rested upon an erroneous interpretation of the statute, the Board's determination was conclusive. Since the Railway Labor Act did not expressly deny to the courts jurisdiction over controversies growing out of administrative decisions of the Board, the conclusion that the Act denied the courts jurisdiction was a matter of inference based upon the type of problem involved and the history, structure, and objectives of the statute.

This conclusion that a statute, by implication, denied jurisdiction to the courts respecting essential elements of an otherwise legally enforceable right, involved greater difficulty than the conclusion that the present statute does not grant, by implication, to those who may benefit from its operation the right to obtain judicial review of its administration.

Decisions defining the limits of a shipper's right to maintain a suit to set aside an order of the Interstate Commerce Commission indicate the reluctance of this Court to subject administrative orders to judicial review where no legal right of the plaintiff has been invaded.¹⁷ In the *Chi-*

¹⁷ A shipper may maintain such a suit if the Commission's order relates to a right given to shippers by the Interstate Commerce Commission Act, but if this is not the case the shipper is without standing to sue although the order adversely affects his economic interests and although he had been a party to the administrative proceeding leading to

cago Junction Case, 264 U. S. 258, cited by petitioners, the carriers' right to maintain the suit rested upon the fact that the Interstate Commerce Act conferred upon them a right to equal treatment with respect to terminal facilities and also upon statutory provisions deemed to confer the right to obtain judicial review of the order involved. See discussion of this case in *Alexander Sprunt & Son, Inc. v. United States*, 281 U. S. 249, 257, and in *Alabama Power Co. v. Ickes*, 302 U. S. 464, 483-484.

Examination of the provisions of the Agricultural Marketing Agreement Act of 1937 leads to the conclusion that it does not impliedly confer upon producers the privilege of obtaining judicial review of the Secretary's marketing orders. In the first place, the statute expressly provides (Sec. 8c(15), R. 41) for judicial review of action of administrative officials in applying the statute, but it confines the remedy to handlers. When Congress thus granted to a specified class the right to obtain judicial review of administrative determinations but omitted any such provision as to others who might be affected by such determinations, it thereby "drew a plain line of distinction"; the distinction is not to be deemed "inadvertent"; and the "selective manner" of providing judicial re-
issuance of the order. *Alexander Sprunt & Son, Inc. v. United States*, 281 U. S. 249, 254-257; *Edward Hines Trustees v. United States*, 263 U. S. 143, 148; *United States v. Merchants & Manufacturers Traffic Assn.*, 242 U. S. 178, 188.

view leads to the conclusion that no such review was intended apart from that for which Congress made express provision. See *Switchmen's Union of North America v. National Mediation Board*, No. 48, this Term. Moreover, such judicial review is to be preceded by administrative review (sec. 8c (15), R. 41). This pattern is significant in determining whether others, without recourse to the administrative remedy and with no conventional legal interest to be protected, were meant to be authorized to sue for an injunction. Cf. *Singer & Sons v. Union Pac. R. Co.*, 311 U. S. 295. And it is specifically provided (sec. 8c (15) (B), R. 41) that the pendency of proceedings brought by handlers shall not impede, hinder, or delay the Secretary or the United States from obtaining relief pursuant to section 8a (6) of the Act. The latter section provides for suits to enforce compliance (R. 32). Thus handlers, whose legal interests are affected by the orders, may contest such orders but may not escape compliance, under the statutory plan. See *Lockerty v. Phillips*, 319 U. S. 182. It would be highly unreal to suppose that Congress meant to confer greater litigious rights on producers, who are not mentioned in relation to judicial review and who are under no legal compulsions and therefore not subject to compliance suits, but who could tie up the operation of an order if permitted to maintain injunctive suits. The report of the House Committee on Agriculture on the bill which became the

Agricultural Marketing Agreement Act of 1937 clearly indicates that Congress did not intend this result (H. Rep. No. 1241, 74th Cong., 1st Sess., p. 14).

In the second place, the issuance of a marketing order by the Secretary of Agriculture is contingent upon an exercise by him of discretionary authority which plainly is beyond the bounds of judicial review.¹⁸ Since the receipt by producers of any benefits whatsoever is made dependent upon a nonreviewable exercise of administrative discretion, Congress is not to be presumed to have granted to producers the right to subject the particular provisions of marketing orders to judicial review.

In the third place, if maintenance of the present action is a right conferred by the statute, then any producer is entitled to judicial review of every provision of a marketing order which enters into the computation of the uniform price payable to producers. In the case of Order No. 4 there could thus be brought under attack the class prices for milk fixed by Section 904.4—the most important factor in the computation—as well as at least six

¹⁸ Section 8c (4) provides that the Secretary shall issue a marketing order if he finds, after notice and opportunity for hearing, that the issuance of an order as to a particular agricultural commodity "will tend to effectuate the declared policy" of the statute with respect to such commodity (R. 34).

other factors.¹⁹ We submit that Congress never intended to confer upon producers the right to make such a broad-scale attack upon marketing orders, which would constitute a serious threat to efficient and orderly administration.

Finally, the Agricultural Marketing Agreement Act of 1937 contains certain safeguards designed in the interest of producers. It authorizes the Secretary to issue a marketing order only if he finds that the order is approved by two-thirds of the producers (in number or in volume of production) in the production area covered by the order (Sec. 8c (8), (9); R. 38-39).²⁰ The Secretary is also required to terminate an order if he finds that termination is favored by a majority of the producers in the production area (Sec. 8c (16) (B), R. 41). These provisions indicate that Congress believed that the interests of producers were sufficiently safeguarded by assuring that marketing orders have the over-all approval of the affected producers.

Petitioners urge that under the holding in *United States v. Rock Royal Cooperative, Inc.*, 307 U. S. 533, 560-561, handlers cannot obtain judicial review of the provisions of the order authorizing

¹⁹ Sec. 904.7b (2)-(7). The six other factors include the deduction for payments to cooperatives. Some of the factors are additions, but an insufficient addition has the same effect in lowering uniform price as a deduction.

²⁰ Producers are likewise entitled to participate in the hearing which the Secretary is required to hold before issuing a marketing order (Sec. 8c (3), R. 34).

payments to cooperatives²¹ and therefore, if producers are not entitled to review of these provisions, they will not be subject to any judicial review. "All constitutional questions aside, it is for Congress to determine how the rights which it creates shall be enforced" (*Switchmen's Union of North America v. National Mediation Board*, *supra*). *A fortiori* this is so when it is a question, as here, not of "rights" created by Congress but of possible benefits flowing from the operation of a federal statute.

The dearth of authority for the proposition that a legal right which gives standing to sue to protect the right may be "founded on a statute which confers a privilege" at least indicates that only rarely have statutes conferred such a right. Of the cases cited in *Tennessee Power Co. v. Tennessee Valley Authority*, 306 U. S. 118, at p. 138, only *American School of Magnetic Healing v. McAnnulty*, 187 U. S. 94, involved such a statutory privilege. In that case a postmaster, on instruc-

²¹ In the *Rock Royal* case the United States brought suit to require certain handlers to comply with a milk order issued by the Secretary of Agriculture and the invalidity of certain provisions of the order was among the defenses set up. The Court's holding that handlers could not raise the issue of the validity of a deduction made in computing uniform price is not necessarily conclusive on the question of their right to obtain judicial review of the validity of the deduction in a proceeding begun before the Secretary of Agriculture under Section 8c (15) of the statute. See *Federal Communications Commission v. Sanders Radio Station*, 309 U. S. 470, 476-477.

tions from the Postmaster General, returned to the senders all mail addressed to the plaintiffs and stamped the mail with the word "fraudulent."

In a suit against the local postmaster a complaint setting forth these facts and that the defendant's acts were not authorized by any federal statute was held to state a valid cause of action. This Court said (p. 110) that the plaintiffs "had the legal right under the general acts of Congress relating to the mails" to have letters addressed to them delivered and that the alleged unauthorized conduct would greatly injure if not wholly destroy the plaintiffs' business. Since the postal system is a governmental monopoly of a necessity of life, the implication was compelling that Congress had conferred upon the ordinary citizen standing to protect his use of the mails against improper interference.

We are not dealing here with a privilege of that kind, but with a claim to greater benefits than those to which the administrator of the statute deems the plaintiff to be entitled. Nor are we dealing with duties which are so plain that they might be termed ministerial, and which might be the subject of mandamus proceedings—the duty, for example, to hold hearings. We are dealing with an exercise of judgment in the administration of a highly complex statute, and an attempt to secure through judicial intervention somewhat greater benefits than those which the administration of the

statute is bringing to the plaintiffs. It is submitted that the statute does not support such an attempt.

CONCLUSION

It is respectfully submitted that the judgment of the court below should be affirmed.

✓ CHARLES FAHY,

Solicitor General.

✓ WENDELL BERGE,

Assistant Attorney General.

✓ CHARLES H. WESTON,

J. STEPHEN DOYLE,

✓ PAUL A. FREUND,

Special Assistants to the Attorney General.

JANUARY 1944.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 211.

DELBERT O. STARK, A. F. STRATTON, A. R. DENTON,
G. STEBBINS, and F. WALSH, *Petitioners*,

v.

CLAUDE R. WICKARD, Secretary of Agriculture of the United
States, and MARVIN JONES, War Food Administrator.

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia.

BRIEF OF THE NEW ENGLAND MILK PRODUCERS' ASSOCIATION AS AMICUS CURIAE.

✓ REUBEN HALL,
30 Federal Street,
Boston, Massachusetts.

✓ CHARLES W. WILSON,
1731 Eye Street, Northwest,
Washington, D. C.

*Attorneys for New England Milk
Producers' Association, Amicus
curiae.*

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States, and MARVIN JONES, War Food Administrator;

—
On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia.

—
**BRIEF OF THE
NEW ENGLAND MILK PRODUCERS' ASSOCIATION
AS AMICUS CURIAE.**

—
FOREWORD.

The New England Milk Producers' Association by its
counsel respectfully submits herewith its brief as *amicus
curiae*, in the within cause.

STATEMENT OF INTEREST.

The New England Milk Producers' Association is a co-
operative association of producers of milk duly organized
and existing under the laws of the Commonwealth of Mas-

sachusetts and having its principal place of business in Boston, County of Suffolk, in said Commonwealth. Your *amicus curiae* is a cooperative association of producers determined by the Secretary of Agriculture as qualified to receive certain payments under the provisions of Section 904.9 of Order No. 4, as amended, regulating the handling of milk in the Greater Boston, Massachusetts marketing area, and which section of said Order was challenged as illegal by the petitioners in their complaint filed in the Court below.

OPINIONS BELOW.

The opinion of the United States Court of Appeals for the District of Columbia is reported in 136 F. (2d) 786. No formal opinion was rendered by the District Court.

JURISDICTION.

The judgment of the court below was entered on June 14, 1943 (R. 72). The petition for a writ of certiorari was filed on July 29, 1943. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. Sec. 347).

QUESTION PRESENTED.

Whether a milk producer, suing in his capacity as a producer, has standing to maintain an action in equity to restrain the operation of a milk order issued under the Agricultural Marketing Agreement Act of 1937.

STATUTE AND ORDER INVOLVED.

The statute involved is the Act of May 12, 1933 (48 Stat. 31) as amended May 9, 1934 (48 Stat. 672), as further amended August 24, 1935 (49 Stat. 750), and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246, 7 U. S. C. Sec. 601 et seq.). An annotated compilation of the Act is contained in the record (R. 31-49). The Order involved is Order No. 4, regulating

the handling of milk in the Greater Boston Marketing Area, as amended July 28, 1941, effective August 1, 1941, issued by the Secretary of Agriculture (7 C. F. R., Chap. IX, Sec. 904; 6 Fed. Reg. 3762). A copy of the Order as amended is set forth in the record (R. 51-65).

STATEMENT OF CASE.

On September 22, 1941, petitioners, each suing in his capacity as a milk producer, filed a complaint in the District Court for the District of Columbia seeking to enjoin respondent from certifying the qualification of any cooperative association of producers to receive payments under Section 904.9 of the Order, and praying that the court declare Sections 904.9 (a) to (d) and 904.7 (b) (5) of the Order illegal and void (R. 6-13, 5). Respondent answered, alleging as his first defense that the complaint failed to state a claim upon which relief could be granted and praying that the complaint be dismissed (R. 20-23). On the application of petitioners the case came on for preliminary hearing on the first defense. The District Court sustained the defense and dismissed the complaint (R. 24) on the ground that petitioners had no standing to sue (R. 26-27). The Court of Appeals affirmed on the same ground (R. 72, 67-71).

SUMMARY OF ARGUMENT.

I. Petitioners have no standing to challenge in Court the validity of Order No. 4, as amended, regulating the handling of milk in the Greater Boston, Massachusetts, marketing area.

1. Under the Act the Secretary of Agriculture is authorized to issue orders applicable to processors and others engaged in the handling of any agricultural commodity or product * * * for the purpose of regulating in the manner provided by the Act, the handling of such agricultural commodity or product thereof. The only persons regulated under such orders are the handlers.

2. The Act itself, Section 8c (15) provides the procedure for a handler to challenge an order or any provision thereof. Such remedies are exclusive. *Hegeman Farms Corp. v. Baldwin et al.*, 293 U. S. 163, 172.

3. By the express terms of the Act, the operations of a producer are not regulated. Congress specifically said that an order should not be applicable to a producer as such. (Section 8c (13) (B)). The petitioners in this action are producers and bring this action in their capacity as producers. Inasmuch as producers are not regulated by any order they can have no legal interest in and under an order which will entitle them to attack a provision thereof by Court action.

4. Under the Act the machinery and method of arriving at the uniform price is largely left to the Secretary. He is allowed to use various differentials and to make various adjustments which are in general set out in sub-division (5) and paragraph (D) of sub-division (7) of Section 8c of the Act. The petitioners in this proceeding question the mechanics or ministerial acts of the Secretary in carrying out the mandate of Congress; namely, to determine a uniform price. The challenged provision of the order was squarely before the Court in the case of *United States v. Rock Round*, 307 U. S. 533, and was there sustained.

Other differentials pertaining to the mechanics by which the uniform price is determined were also considered by the Circuit Court of Appeals in the case of *Green & Allen Creamery Co., Inc. v. United States*, 108 F. (2d) 342, and were there sustained.

ARGUMENT.

I.

Petitioners have no standing to challenge the validity of Order No. 4 regulating the handling of milk in the Greater Boston, Massachusetts, marketing area.

a. Apparently It Was Not the Intent of Congress to Give Producers an Opportunity to Question the Terms and Provisions of an Order in a Court Action.

Section 8c (1) of the Act (7 U. S. C. A., sec. 608c (1)) authorizes the Secretary of Agriculture to "issue * * * orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product¹ * * *" for the purpose of regulating in the manner provided by the Act, the "handling of such agricultural commodity or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects interstate or foreign commerce in such commodity or product thereof." Such "processors, associations of producers, and others engaged in handling" are referred to in this section as "handlers."

Section 8c (3) of the Act provides that the Secretary of Agriculture, when he "has reason to believe that the issuance of an Order will tend to effectuate the declared policy" of the Act "shall give due notice of and an opportunity for a hearing upon a proposed Order." No claim is made in this case that the Secretary failed to follow the provisions of Section 8c (3) of the Act in his issuance and subsequent amending of Order No. 4. Neither is any claim made that petitioners herein did not have an opportunity to appear and object to any terms of said Order at the various hearings held by the Secretary prior to its issuance and amendment.

Moreover, Section 8c (8) and (9) of the Act provide that before any orders relating to milk are issued in a market by the Secretary, he must determine that such orders are

¹ Section 8c (2) (7 U. S. C. A., sec. 608c (2)), specifies the commodities for which orders may be issued and includes "milk".

approved or favored by two-thirds of the producers. No claim is made that this statutory prerequisite was lacking in reference to Order No. 4. In the referendum held by the Secretary to aid him in making this determination, the producers have, and petitioners here had, an opportunity to voice their approval or disapproval of any provisions of the proposed Order or proposed amendment thereto. It is a well-established rule of our democratic form of Government that the will of the majority shall prevail unless in some manner express rights granted by the Constitution are transgressed; here, we have not merely the voice of a majority of the producers expressed in a referendum, but under a statutory requirement that the approval must be by not less than a two-thirds vote, a favorable decision by such a percentage of producers. Therefore, any upsetting of the Order in question by the dissident producers who are petitioners in this case would mean that the will of two-thirds of all of the producers in the Boston milkshed would be set aside at the instance of these few.

In contradistinction to the absence of any express provision in the act giving petitioners an opportunity to question in a court action the terms of a Federal milk marketing order, Section 8c (15) of the Act provides for a review of the terms of an order, but that review is limited to a "handler" who is directly affected by such order.

In this connection the intent of Congress is set forth in the Report No. 1241, to accompany H. R. 8492,² of the House Committee on Agriculture, 74th Cong. 1st Sess., page 14, where after summing up the nature of this handler review provision the Committee concluded:

"It is believed that these provisions establish an equitable and expeditious procedure for testing the validity of orders without hampering the Government's power to enforce compliance with their terms."³

² H. R. 8492, 74th Cong. 1st Session became Public No. 320—74th Cong., 49 Stat. 750.

³ Cf. Report No. 1011, Senate Committee on Agriculture and Forestry, 74th Cong., 1st Sess., P. 14.

It is, therefore, submitted that it was the intent of Congress that the right of review should be limited to handlers and that was all that was necessary under the circumstances.

There are compelling reasons for the support of this conclusion of Congress. *First*, while handlers like producers had an opportunity to attend a hearing and protest on any objectionable provisions to be inserted in an order, unlike a producer, a handler is not given an opportunity to cast his vote on the acceptance of an order except that, of course, under the provisions of subdivision (8) of Section 8c he has an opportunity to vote upon the acceptance of a marketing agreement, but despite his neglect or refusal to accept a marketing agreement, an order may be placed in effect upon approval by the producers regardless of the will of the handlers. See Section 8c (8) and (9) of the Act (7 U. S. C. A., sec. 608c (8) and (9)).

In other words, the producer is given an opportunity for objection to the terms of an order which a handler does not have.

Secondly, the terms of an order directly affect a handler in various ways, including the making of reports and payments for the milk handled by him. He is obliged to account to the Market Administrator as well as to the producer. The business of the handler is largely regulated by the terms of an order, including the manner of distribution of milk and milk products, his accounting system, etc. The producer, on the other hand, is affected only indirectly and merely to the extent that a floor is placed under his bargaining power in contracting with his handler for the sale of his milk. It would seem clear that the handler is the one who has a vital interest in the terms of the Order and, therefore, is entitled to a review insofar as its terms directly affect him. (Section 8c (15) of the Act.)

Thirdly, the number of handlers, naturally, is limited in any market. Therefore, the possibility of litigation which would seriously interfere with the ability of the government

to enforce an order similarly is fairly limited. On the other hand, if, in addition to the handlers, any producer be allowed to challenge the validity of an order or any provision thereof, the amount of litigation might place an intolerable burden on the government. There are thousands of producers delivering milk under the terms of the federal order in question here and, under the like order regulating the handling of milk in the Metropolitan New York market, involved in *United States v. Rock Royal Cooperative, Inc.*, 307 U. S. 533, it was disclosed that there were more than 60,000 producers delivering under the New York order. *Id.*, 26 F. Supp: 534, 543.

This reasoning is more convincing when we consider that the procedure set forth in Section 8c (15) of the Act for a handler to challenge an order requires first a petition to the Secretary and then an appeal to a District Court to review the Secretary's ruling.

As construed by the courts (*Cf. Hegeman Farms Corporation v. Baldwin et al.*, 293 U. S. 163, 172) remedies of this kind are exclusive; and, therefore, as to any direct provision of an order an injunction suit probably is not permitted. If the producer, on the other hand, be allowed to litigate the terms of an order, he would not be bound by any such restrictions imposed by this statute and the government would be open to possible suits by thousands of producers seeking, as here, temporary restraining orders as well as preliminary and permanent injunctions thereby hampering the government in its enforcement of an order, and this was what the Congressional Committees had in view when they spoke of a possible hampering of the government's power to enforce orders. *Ibid.*

The suggestion made at the hearing in the District Court by counsel for the petitioners that unless producers are given the right to review any provision of an order in Court, the Secretary of Agriculture might abuse the delegation of power given him by Congress in drafting an order by inserting a provision, for example, for use of the moneys turned over to the Market Administrator for erection of a

building for the department, is certainly a specious argument. There can be little doubt but that the producers would vote down any order or amendment thereto which contains any such improper provision.

Fourthly, this Court in the *Rock Royal* case, *supra*, p. 561, held, in substance, that neither a proprietary nor a co-operative handler could question a provision in the New York Order, similar to that in the Boston Order which is attacked by petitioners in their complaint in the Court below, providing for payments to cooperatives for services. If the present action is permitted to proceed, it may well be used as a subterfuge by the proprietary handlers to attack provisions of an order, such as the one at issue here, by simply arranging with some of their producer-suppliers to act as party plaintiffs—in fact as “stooges” for the handler.

Fifthly,—and this is especially compelling—by the express terms of the Act the operations of a producer are not regulated. Congress specifically said that an order should not be applicable to a producer as such. (Section 8c (13) (B) of the Act; 7 U. S. C. A., sec. 608c (13) (B)).

In the Report of the House Committee on Agriculture, *id.*, page 7, is the following statement:

“Specific exemption of producers from the power to issue orders has been provided for, and, except in the case of retailers of milk and its products, the issuance of orders applicable to retailers is restricted as set forth below.”

It is submitted, therefore, that the clear intention of Congress was that producers who did not engage directly in the distribution of milk should not be regulated under the terms

¹ The Senate Committee on Agriculture and Forestry, in Report No. 1041, to accompany H. R. 8492, 74th Cong., 1st Sess., at page 9, stated:

“* * * nor may it [a marketing order] in any case be applicable to any producer in his capacity as a producer.”

of any order issued under the Act. If, then, producers are not regulated by any order, how can they have any legal interest in, and under, an order which will entitle them to attack a provision thereof by Court action?

There is another anomaly which would result from the judicial recognition of a right in individual producers to question, in court, the provisions of an order such as the one involved in this case and such an anomaly, if permitted, would seriously affect the co-operatives which are operating under an order and in particular the co-operative presenting this brief. The anomaly arises from the fact that in the *Rock Royal* case the Court (page 561) held, in substance, that co-operatives did not have a right to question such provisions even though the court recognized and held further that co-operatives were properly allowed to represent their producers in voting on the approval or disapproval of an order or amendments thereto (pages 559, 578); that the Secretary was required to accord recognition and encouragement to producer-owned and producer-controlled co-operative associations by the terms of the act (page 563); that "these agricultural co-operatives are the means by which farmers and stockmen enter into the processing and distribution of their crops and livestock" (page 563); that " * * * the co-operative is the marketing agency of those for whom it votes"; and that "these associations of producers of milk have a vital interest in the establishment of an efficient marketing system." (page 559). Thus, it would be a real discrimination to permit individual producers who are not members of a co-operative association to have a day in court on a subject like this, while co-operative associations, as the representative of their large groups of producers, would be denied such a right.

It would seem, therefore, that in view of the evident intent of Congress and the construction of the Act by this Court no such anomaly was intended or should be allowed.

Further, in view of this expressed intent of Congress the rule of "*expressio unius exclusio alterius*" should apply as

to remedy. *Tucker v. Alexandroff*, 183 U. S. 424, 436; *Continental Casualty Co. v. United States*, 314 U. S. 527, 533.

b. *The Intent of Congress is to Be Determined from the History of the Act, Including Reports of Committees of Congress.*

In interpreting the Act involved in this case, it is submitted that the Court should ascertain the intent of Congress and give effect to such intent. This it may do from the legislative history of the Act including the reports of the committees handling the legislation. *United States v. American Trucking Association*, 310 U. S. 534, 542-5; *Helvering v. New York Trust Co.*, 292 U. S. 455; *Great Northern Railway Co. v. United States*, 315 U. S. 262; *Hoffman v. Palmer*, 127 F. (2d) 976; 987-989. Excerpts from the Congressional Committee reports quoted and referred to *supra* are particularly cogent in determining the inquiry here whether petitioners have standing to maintain this action. They show a legislative purpose to confine the right of review to those parties *only* who are affected by the Secretary's order, namely, the handlers regulated by the order. That right is, first, a petition for relief addressed to the Secretary of Agriculture, and second, an action in the appropriate United States District Court for a review of the Secretary's ruling on such petition when not in accordance with law (Section 8c (15) of the Act). They preclude, as does the manifest purpose of the Act when read by its four corners, a construction of the Act whereby these petitioners have standing to challenge the validity of Order No. 4. As Justice Holmes, writing for the Court in *New York Trust Co. v. Eisner*, 256 U. S. 345, on the question of statutory interpretation, aptly stated: "Upon this point a page of history is worth a volume of logic."

II.

The producer has no legal interest in the equalization fund under the Order and, therefore, he is not entitled to a day in Court to question the terms of such an order relating to the creation of the equalization fund and determination of what the announced uniform price shall be.

Sections 8c (5) and (7) of the Act (7 U. S. C. A., sec. 608c (5) and (7)) set out certain definite standards or regulations for the Secretary of Agriculture to follow in formulating a milk marketing order. The primary standard is that, except in case of the required approval by three-fourths vote of the producers of a so-called handler-pool (that is, a determination of prices on the basis of the operations of each particular handler, which case is not applicable to the Boston Order), the Secretary shall provide for the payment to all producers and associations of producers, producing milk for the market, of a uniform price subject only to certain adjustment or differentials. (Sec. 8c (5) (A) and (B) (ii) of the Act; 7 U. S. C. A., sec. 608c (5) (A) and (B) (ii)).

The machinery and method of arriving at such uniform price is largely left to the Secretary except that he is to use the classified price system, viz., a system whereby each handler shall account to the Market Administrator for all sales of milk on the basis of the nature of its use, whether as fluid milk, cream or in manufactured products with varying prices according to the use. The Secretary is allowed to use various differentials and to make various adjustments which are in general set out under subdivision (5) and paragraph (D), subdivision (7) of Section 8c of the Act. The details of the ministerial duties of the Secretary in carrying out the delegated power of Congress are left to him under these provisions within the limitations of the Act, but these limitations are rather general in nature and naturally much discretion must be left to the Secretary.

² See Section 8c (5) (B) (i) of the Act; 7 U. S. C. A., sec. 608c (5) (B) (i).

The issue in this case arises from the apparent claim of the plaintiffs below that in creating the machinery for determining the uniform price, the Secretary has adopted a device which is not authorized by Congress. In any event, the question raised relates to the mechanics or ministerial acts of the Secretary in carrying out the mandate of Congress, namely, to determine a uniform price and it is submitted that the individual producer has no direct interest in the nature of the mechanics or administrative methods of the Secretary in the determination of this uniform price.

Two propositions are respectfully submitted in support of this thesis:

A. The Secretary has adopted as a basis of his mechanics in obtaining this price what is known as the equalization plan, that is, a blending of all the values of all milk of all the handlers into one fund and, after certain deductions, determining a uniform price on the basis that the total net amount of this fund bears to each 100 pounds of milk delivered by the producers.

In the *Rich-Royal* case, *supra*, the Court had squarely before it for determination the question raised by handlers that this equalization plan was unconstitutional and that it denied the alleged constitutional right of the handlers to pay the producers in accordance with the use of the producers' milk and compelled them to contribute to a fund to handle the surplus of other handlers whose sales were less advantageous (pp. 572, 573 of 307 U. S.). The Court upheld fully the validity of the equalization plan. Of course, it is true that which was actually attacked was the blending of the funds from the sales of the different handlers. However, that is an integral part of the mechanics adopted by the Secretary in carrying out the mandate of Congress and in order to determine a uniform price to producers. The deduction, as provided in the Order (Section 904.9 of Order No. 4), for the purpose of paying co-operatives for services rendered are a part of these mechanics left to the discretion of the Secretary. The Court also upheld

other provisions of the order involved in the *Rock Royal* case pertaining to the mechanics of the pool, such as differentials in favor of producers residing nearby to the market and exemption from price regulation of out of market sales (pp. 566, 567). We therefore, submit that the holding of the Court in the *Rock Royal* case is applicable in the instant case.

A like applicable decision is *Green Valley Creamery Inc. v. United States, et al.*, 108 F. (2d) 342, which was decided subsequent to the Supreme Court decision in the *Rock Royal* case. This case involved suits in equity by the United States and the Secretary of Agriculture seeking mandatory injunctions requiring defendants to comply with provisions of the Order in question here,—although the provision challenged here in the Court below was not then a part of the Order. Defendants in the case were handlers. They challenged the validity of the provisions of the Order wherein two sets of minimum prices, one applicable to the purchase of milk from an association of producers, and the other to the purchase from producers not members of an association. They challenged also the method of computing the blended or uniform price on the ground that there was no legal authority for excluding from the computations of such price the milk of handlers who were in default in their required equalization payments “for milk received during the delivery period next preceding but one.” Further attack was made upon certain “location differentials” accorded under the Order to nearby producers. The Circuit Court concluded that the Order was valid in each particular.

With respect to the contention that under Section 8c (5) (A) of the Act, the minimum price must be uniform, subject only to certain adjustments set forth in the Act, none of which is dependent upon the class of producers from which milk is received, the Court concluded that said section authorized the differential in price as a “market differential customarily applied by handlers.” It referred to the Secretary’s finding upon the hearing evidence “that the

differential in price to associations of producers, and producers, is justified as a reasonable allowance for services actually performed by associations of producers;" and stated that the evidence showed "that such a differential had customarily been applied in the market area for the reason that milk purchased from associations of producers has an enhanced value due to the fact that many marketing services have already been performed by such associations." The Court further supported its conclusion by referring to the fact that the Secretary in promulgating the original Order No. 4 on February 9, 1936, construed Section 8c (5) (A) of the 1933 Act, as amended (49 Stat. 754), as authorizing such a differential in price and that Congress subsequently re-enacted, without amendment, this portion of the Act (50 Stat. 246).

As to the attack made upon the method of computing the blended or uniform price and the exclusion therefrom of milk of defaulting handlers, the Court, after stating that "the purpose of this provision seems to be to minimize the risk that the equalization pool will fail to be self-liquidating for a particular delivery period on account of defaults by handlers obligated to the pool * * *" concluded (p. 345):

"The Act does not specify the detailed method by which a blended or uniform price is to be computed. The method adopted in Article VII of the Order seems reasonably adapted to promoting the successful operation of the equalization pool which, in turn, is a device calculated to insure the payment to producers of uniform prices for all milk delivered to handlers, irrespective of the uses made of such milk by the individual handler to whom it is delivered (Act, Sec. 8c (5) (B) (ii)). Defaulting handlers are subject to penalties in the Act, and though their milk has been excluded from the computations of the pool, they are nevertheless liable to pay their producers at the announced blended price. If they later made good their pool debts, such payments will be reflected in an increased blend price for a later delivery period.

"In addition * * * it is questionable whether these appellants are in a position to attack the validity of the

provisions of the Order dealing with the computation of the blended price. While the exclusion of milk of a defaulting handler may affect the blended price, the Master points out that the level of the blended price does not affect in any way the total charges to handlers participating in the pool, which is computed not on the basis of the blended price but rather on the basis of the minimum prices fixed in Article IV * * * for the milk a handler receives from producers in a particular delivery period."

Lastly, the Court after finding support in the evidence for differentials in price based upon the location of the farms of producers, i.e., "somewhat more favorable prices for their (nearby producers) fluid milk as against producers more remotely located," held that they not only were "location differentials" sustainable under Section 8c (5) (B) (ii) of the Act, but also that they were "market differentials which had customarily been applied by handlers subject to the Order."

B. The basis of this Court's decision in the *Rock Royal* case as to equalization seems equally applicable to the instant case.

Justice Reed declared, in substance, at page 572, that the price regulation provision was a smoothing out of the difficulties of the surplus and cut-throat competition which burdened the market and as Congress had the right to permit only limited amounts of milk to move in interstate commerce, it might permit the movement on terms of pool settlement provided in the order. He pointed out in effect that it was a common fund for equalizing risks similar to that employed in workmen's compensation.

He also pointed out that the price was only a minimum price to producers, stating (p. 554):

"It should be understood, however, that this minimum price is not the amount which the producer receives but the price level or so-called 'value' from which is calculated the actual amount in dollars and cents which he is to receive."

This statement would seem to confirm the theory of this brief which, tersely stated, is that it is the duty of the Secretary to establish a common fund by taking the values of all milk and making such additions or subtractions as he deems advisable and within the provisions of the Act and, when this common fund is finally ascertained, it is the basis of the computation by which the minimum price payable for the milk of the individual producers is fixed but such price is not fixed until all of the mechanics relating to the fund and its final determination are consummated. It is not necessary for a fund in the hands of a public officer to belong to the federal government or other governmental body represented by the officer, provided the functions for which the official holds the money are public or quasi-public functions.

It was held in *Merris v. Jackson*, 93 F. (2d) 584, that the phrase "public money" should be construed to cover not only money, the beneficial title of which is in the state, but public money the legal title of which is held by a public officer for the benefit of private persons.

In *Dayton-Goose Creek Railway Co. v. United States*, 262 U. S. 456, the Court discussed the legality of somewhat similar provisions relating to the sharing of railroad earnings under the Transportation Act. The Court said in part (p. 484):

"* * * The excess caused by the discrepancy between the standard of reasonableness for the shipper and that for the carrier due to the necessity of maintaining uniform rates to be charged the shippers, may properly be appropriated by the government for public uses because the appropriation takes away nothing which equitably belongs either to the shipper or to the carrier. Yet it is made up of payments for service to the public in transportation, and so it is properly to be devoted to creating a fund for helping the weaker roads more effectively to discharge their public duties. Indirectly and ultimately this should benefit the shippers by bringing the weaker roads nearer in point of economy and efficiency to the stronger roads and thus making it just and possible to reduce the uniform rates."

In *Railroad Retirement Board v. Alton Railroad Co.*, 295 U. S. 330, the minority opinion written by Chief Justice Hughes and concurred in by Justices Brandeis, Stone and Cardozo, refers to the *New England Divisions* case, 261 U. S. 184, and points out, in substance, that there the government was adopting a new policy, namely, of a group system of rates and the division of rates in the public interest. The weak were to be aided by diverting revenues to them from the more prosperous business. This was summed up in the following language (p. 387):

“Thus, by marshaling the revenues, partly through capital account, it was planned to distribute augmented earnings largely in proportion to the carrier's needs.”

And so in the instant case, the determination of the value of the milk before distribution may well be said to be a marshaling of the handlers' selling opportunities. The marshaling, however, comprehends all of the administrative acts in determining the amount of the equalization fund, the amount of allowances to be made from it or the amount of charges to be added to it before the final result, the minimum uniform price payable to producers is arrived at.

But in this administrative process, the producer has no legal or other interest which might be invaded by alleged erroneous or wrongful action by the Secretary. The end result being the establishment of a minimum price handlers are required to pay producers in nowise affects the producer other than to provide a floor, when made effective through the issuance of a marketing order, below which the price of his milk may not be purchased by the handler subject to the order. Neither the process, the final determined uniform price, nor the order command or restrain any conduct on the part of the producer. He is left free to sell his milk above the minimum price prescribed; or not to sell it at all, or to sell it elsewhere than in the market under regulation. Moreover, he has no legal interest in the equalization fund itself. He neither looks to the fund for payment, nor does he have the corresponding privilege or obligation, as the

case may be, of the regulated handler to make payments into the fund or to receive payments from the fund depending upon the particular handler's use of the milk.

This being true, the producer has no right of action, predicated on alleged error or unlawful action in the administrative process undertaken by the Secretary, for the reason that there must be a clear invasion of his legal rights and as demonstrated, he has no such direct legal interest in the equalization fund. *Perkins v. Lukens Steel Co.*, 310 U. S. 113, which involved an action to restrain the Secretary of Labor and other government officials from applying the Secretary's minimum wage determinations to bidders on government contracts on the ground that the Secretary's action was erroneous in part under the Public Contracts Act which requires government contractors to agree to pay their employees engaged in producing goods sold to the United States the minimum wage, is in point. There this Court, in holding that the contested action did not invade private rights and that petitioners, prospective bidders, have no standing to challenge the wage determinations, stated (p. 125):

"* * * It is by now clear that neither damage nor loss of income in consequence of the action of Government, which is not an invasion of recognized legal rights, is in itself a source of legal rights in the absence of constitutional legislation recognizing it as such. * * * Respondents, to have standing in court, must show an injury or threat to a particular right of their own as distinguished from the public's interest in the administration of the law."

Cf. Switchmen's Union of North America v. National Mediation Board, decided November 22, 1943, 64 S. Ct. (adv. sheets) 95; *L. Singer & Sons v. Union Pacific R. Co.*, 311 U. S. 295; *Alexander Sprunt and Son v. United States*, 281 U. S. 249; *Excello Corp. v. City of Chicago*, 115 F. (2d) 627.

In the *Singer & Sons* decision, this Court denied the right of the plaintiff produce merchant to enjoin a construction of an extension by the defendant railroad to a rival pro-

duce market on the ground that he was not a "party in interest" within the meaning of Section 402 of the Transportation Act. In the specially concurring opinion of Justice Frankfurter, in which the majority of the Court joined, it was pointed out the plaintiff had such public agencies as the Interstate Commerce Commission or the Attorney General to which he could turn. Here, likewise, the producer has his opportunity to be heard at the hearings held by the Secretary and to voice his approval or disapproval in the subsequent producer referendum on whether or not an order shall be issued. Furthermore, the Secretary may be said to be the representative of the producer under the marketing program, in view especially of Section 2 (1) of the Act (7 U. S. C. A., sec. 602 (1)). Not only is the Secretary the producers' representative, but additionally under sub-division (2) of said section he is charged with protecting the interests of consumers. Although the Act recognizes consumer rights, it is at once apparent that no right to question the terms of a marketing order or agreement vests thereby in consumers. And under the theory of the statute, it is proper that no consumer would or should have such right.

Again, sight may not be lost of the fact that there is still another public officer to whom both producer and consumer may look for the protection of their rights as they may be indirectly affected by a marketing order program. Section 8c (9) of the Act (7 U. S. C. A., sec. 608c (9)), relating to the issuance of orders without a marketing agreement, provides in part:

"Any order issued pursuant to this section shall become effective in the event that * * * the Secretary of Agriculture, *with the approval of the President*, determines:

"(1) That the refusal or failure to sign a marketing agreement * * * by the handlers * * * tends to prevent the effectuation of the declared policy of this title * * * and

"(2) That the issuance of such order is the only practical means of advancing the interests of the producers * * * pursuant to the declared policy, and is approved or favored by at least two-thirds of the producers * * * (Italics supplied)

The petitioners' complaint does not adequately allege that they are suffering actual damages as a result of the order involved here.

The purpose of the provision for payments to cooperatives are cogently expressed in the brief of the Solicitor General in the *Rock Royal* case, *supra*, p. 156, as follows:

"The purpose and effect of the payments to cooperative associations is to distribute equitably among producers the cost of services which result in a higher uniform price to all producers. These payments are simply one feature of the distribution of the burden of the surplus milk among all producers."

The petitioners in their complaint fail to show that the amended order as affected by the services rendered by the cooperatives thereunder is returning a lower return to the producers than they received under the prior order, or that they would have received if there was no order. They, therefore, have no proper standing to complain in this case. *Wickard v. Fillburn*, 317 U. S. 111; nor are petitioners entitled to prosecute the suit as private Attorneys General. *Queensboro Farm Products v. Wickard*, 137 F. (2d) 969, 978-9.

III.

The sole point in issue here is whether petitioners have standing in Court to maintain this action. This brief, therefore, does not discuss the challenged provisions of Order No. 4. There is, however, upon this appeal, a presumption that the Secretary of Agriculture acted in accordance with law and upon proper evidence adduced at the hearings. *Cf. Thompson v. Consolidated Gas Company*, 300 U. S. 55, 69; *Bailey v. Holland*, 126 F. (2d) 317, 322; *Forbes v. United States*, 125 F. (2d) 404, 409.

CONCLUSION.

It is respectfully submitted that the judgment of the Court below should be affirmed.

REUBEN HALL,
30 Federal Street,
Boston, Massachusetts.

CHARLES W. WILSON,
1731 Eye Street, Northwest,
Washington, D. C.,
*Attorneys for New England Milk
Producers' Association, Amicus
curiae.*

SUPREME COURT OF THE UNITED STATES.

No. 211.—OCTOBER TERM, 1943.

Delbert O. Stark, A. F. Stratton,
A. R. Denton, G. Stebbins and
F. Walsh, Petitioners,

vs.

Claude R. Wickard, Secretary of
Agriculture of the United States,
et al.

On Writ of Certiorari to the
United States Court of
Appeals for the District
of Columbia.

[February 28, 1944.]

Mr. Justice REED delivered the opinion of the Court.

This class action was instituted in the United States District Court for the District of Columbia, to procure an injunction prohibiting the respondent Secretary of Agriculture from carrying out certain provisions of his Order No. 4, effective August 1, 1941, dealing with the marketing of milk in the Greater Boston, Massachusetts, area. See Agricultural Marketing Agreement Act of 1937, 50 Stat. 246; 7 U. S. C. §§ 601 *et seq.*, and Order 4, United States Department of Agriculture, Surplus Marketing Administration, Title 7, Code of Federal Regulations, Part 904. The district court dismissed the suit for failure to state a claim upon which relief can be granted, and its judgment was affirmed by the Court of Appeals for the District of Columbia, 136 F. 2d 786. The respondent War Food Administrator was joined in this court upon a showing that he had been given powers concurrent with those of the Secretary. See Executive Order No. 9334, filed April 23, 1943. We granted certiorari because of the importance of the question to the administration of this Act. — U. S. — (October 11, 1943).

The petitioners are producers of milk, who assert that by §§ 904.7(b)(5) and 904.9 of his Order, the Secretary is unlawfully diverting funds that belong to them. The courts below dismissed the action on the ground that the Act vests no legal cause of action in milk producers, and since the decision below and the argument

S.F.R. 5423, 5425.

here were limited to that point, we shall confine our consideration to it.

The district court for the District of Columbia has a general equity jurisdiction authorizing it to hear the suit;¹ but in order to recover, the petitioners must go further and show that the act of the Secretary amounts to an interference with some legal right of theirs.² If so, the familiar principle that executive officers may be restrained from threatened wrongs in the ordinary courts in the absence of some exclusive alternative remedy will enable the petitioners to maintain their suit; but if the complaint does not rest upon a claim of which courts take cognizance, then it was properly dismissed. The petitioners place their reliance upon such rights as may be expressly or impliedly created by the Agricultural Marketing Agreement Act of 1937 and the Order issued thereunder.

Although this Court has previously reviewed the provisions of that statute at length and upheld its constitutionality,³ some further reference to it is necessary to an understanding of the producer's interest in the funds dealt with by the Order.⁴

¹ See 18 D. C. Code § 41, as amended, 49 Stat. 1921. The District of Columbia court may also exercise the same jurisdiction of United States district courts generally, 18 D. C. Code § 43, which have jurisdiction under the Judicial Code over cases arising under acts regulating interstate commerce. Judicial Code, § 24(8), 28 U. S. C. § 41(8); *Mulford v. Smith*, 307 U. S. 38; *Turner Lumber Co. v. Chicago, M. & St. P. Ry.*, 271 U. S. 259; *Robertson v. Argus Hosiery Mills*, 121 F. 2d 285.

² See *Tennessee Power Co. v. T. V. A.*, 306 U. S. 118, 137-8.

³ See *United States v. Rock Royal Co-op.*, 307 U. S. 533; *H. P. Hood & Sons v. United States*, 307 U. S. 588.

⁴ The following clauses of the Act are necessary to a consideration of this case:

"SEC. 2. It is hereby declared to be the policy of Congress—

"(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; and, in the case of all commodities for which the base period is the pre-war period, August 1909 to July 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during the base period. The base period in the case of all agricultural commodities except tobacco and potatoes shall be the pre-war period, August 1909-July 1914. In the case of tobacco and potatoes, the base period shall be the post-war period, August 1919-July 1929.

"(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public in-

The immediate object of the Act is to fix minimum prices for

terest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section."

"SEC. 8a(5) Any person willfully exceeding any quota or allotment fixed for him under this title by the Secretary of Agriculture, and any other person knowingly participating, or aiding, in the exceeding of said quota or allotment, shall forfeit to the United States a sum equal to three times the current market value of such excess, which forfeiture shall be recoverable in a civil suit brought in the name of the United States.

"(6) The several district courts of the United States are hereby vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating any order, regulation, or agreement, heretofore or hereafter made or issued pursuant to this title, in any proceeding now pending or hereafter brought in said courts.

"(7) Upon the request of the Secretary of Agriculture, it shall be the duty of the several district attorneys of the United States, in their respective districts, under the directions of the Attorney General, to institute proceedings to enforce the remedies and to collect the forfeitures provided for in, or pursuant to, this title. Whenever the Secretary, or such officer or employee of the Department of Agriculture as he may designate, for the purpose, has reason to believe that any handler has violated, or is violating, the provisions of any order or amendment thereto issued pursuant to this title, the Secretary shall have power to institute an investigation and, after due notice to such handler, to conduct a hearing in order to determine the facts for the purpose of referring the matter to the Attorney General for appropriate action.

"(8) The remedies provided for in this section shall be in addition to, and not exclusive of, any of the remedies or penalties provided for elsewhere in this title or now or hereafter existing at law or in equity.

"(9) The term 'person' as used in this title includes an individual, partnership, corporation, association, and any other business unit."

"SEC. 8c(3) Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this title with respect to any commodity or product thereof specified in subsection (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

"(4) After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this title with respect to such commodity.

"(5) In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

"(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made, for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers.

"(B) Providing:

(i) for the payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered

the sale of milk by producers to handlers. It does not forbid sales at prices above the minimum. It contains an appropriate declara-

by them: Provided, That, except in the case of orders covering milk products only, such provision is approved or favored by at least three-fourths of the producers who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from any other approval or disapproval provided for by this section; or

(ii) for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered;

subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered, (c) the locations at which delivery of such milk is made, and (d) a further adjustment, equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their marketings of milk during a representative period, of time.

"(C) In order to accomplish the purposes set forth in paragraphs (A) and (B) of this subsection (5), providing a method for making adjustments in payments, as among handlers (including producers who are also handlers), to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at the prices fixed in accordance with paragraph (A) hereof."

Among the provisions of subsection (7), referred to in Section 8c(5), is authorization for terms described as follows:

"Sec. 8c(7)(D) Incidental to, and not inconsistent with, the terms and conditions specified in subsections (5), (6), and (7) and necessary to effectuate the other provisions of such order."

Sections 8c(8) and 8c(9) provide, with exceptions not here relevant that a marketing order must have the approval of the handlers of at least 50% of the volume of the commodity subject to the order unless the Secretary, with the approval of the President, determines that the proposed order is necessary to effectuate the declared policy of the Act and "is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy. . . ." Section 8c(9)(B). Whether the handlers agree or not, an order must be found to be "approved or favored" either by two-thirds of the producers in number or by volume of the commodity produced. Section 8c(19) authorizes the Secretary to hold a referendum to determine whether producers approve.

"Sec. 8c(13)(B) No order issued under this title shall be applicable to any producer in his capacity as a producer."

"Sec. 8c(14) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order (other than a provision calling for payment of a pro rata share of expenses) shall, on conviction, be fined not less than \$50 or more than \$500 for each such violation, and each day during which such violation continues shall be deemed a separate violation: Provided, That if the court finds that a petition pursuant to subsection (15) of this section was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under this subsection for such violations as occurred between the date upon which the defendant's petition was filed with the Secretary, and the date upon which notice of the Secretary's ruling thereon was given

tion of policy,⁵ and it provides that the Secretary of Agriculture shall hold a hearing when he has reason to believe that a marketing order would tend to effectuate the purposes of the Act.⁶ If he finds that an order would be in accordance with the declared policy, he must then issue it.⁷ Sections 8c(5) and 8c(7) enumerate the provisions that the order may contain. Section 8c(5)(A) authorizes the Secretary to classify milk in accordance with the form or purpose of its use, and to fix minimum prices for each classification. These minima are the use value of the milk. This method of fixing prices was adopted because the economic value of milk depends upon the particular use made of it.⁸ It is apparent that serious inequities as among producers might arise if the prices each received depended upon the use the handler might happen to make of his milk; accordingly, Section 8c(5)(B) authorizes provision to be made for the payment to producers of a uniform price⁹ for the milk delivered irrespective of the use to

to the defendant in accordance with regulations prescribed pursuant to subsection (15)."

"SEC. 8c(15)(A) Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

"(B) The District Courts of the United States (including the Supreme Court of the District of Columbia) in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either, (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 8a(6) of this title. Any proceedings brought pursuant to section 8a(6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15)) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15)."

⁵ Section 2, n. 4, *supra*.

⁶ Section 8c(3), n. 4, *supra*.

⁷ Section 8c(4), n. 4, *supra*.

⁸ See *United States v. Rock Royal Co-op.*, 307 U. S. 533, 549-50.

⁹ "Uniform price" means weighted average of minimum prices.

which the milk is put by the individual handler. Section 8c(5)(C) authorizes the Secretary to set up the necessary machinery to accomplish these purposes.

By Order No. 4,¹⁰ the Secretary of Agriculture did fix minimum prices for each class of milk and required each handler in the

¹⁰ The preamble to the order recites the holding of hearings and compliance with Section 8c(9) of the Act. Section 904.0 of the Order contains the Secretary's findings and Section 904.1 the definitions of terms.

"Sec. 904.1(6) The term 'handler' means any person, irrespective of whether such person is a producer or an association of producers, wherever located or operating who engages in such handling of milk, which is sold as milk or cream in the marketing area, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects interstate or foreign commerce in milk and its products."

Section 904.2 enumerates the duties of the market Administrator. Section 904.3 classifies milk into Class I milk and Class II milk according to its utilization. Generally speaking, Class I milk is that which is utilized for sale as milk containing from $\frac{1}{2}$ of 1% to 16% butterfat or as chocolate or flavored milk, while Class II includes all other uses.

Section 904.4 provides:

"SEC. 904.4 MINIMUM PRICES. (a) *Class I prices to producers.* Each handler shall pay producers, in the manner set forth in Sec. 904.8, for Class I milk delivered by them, not less than the following prices:

(b) *Class II prices.* Each handler shall pay producers, in the manner set forth in Sec. 904.8, for Class II milk delivered by them not less than the following prices per hundredweight:

Section 904.5 provides for necessary informational reports by handlers, and Section 904.6 deals with the application of the Order to exceptional types of handlers. Section 904.7, dealing with computation of the weighted average, read in its applicable portions as of July 28, 1941, as follows:

"SEC. 904.7 DETERMINATION OF UNIFORM PRICES TO PRODUCERS. (a) *Computation of value of milk for each handler.* For each delivery period the market administrator shall compute, . . . the value of milk sold, distributed, or used by each handler . . . in the following manner:

"(1) Multiply the quantity of milk in each class by the price applicable pursuant to paragraphs (a), (b), and (c), of Sec. 904.4; and

"(2) Add together the resulting value of each class.

"(b) *Computation and announcement of uniform prices.* The market administrator shall compute and announce the uniform prices per hundredweight of milk delivered during each delivery period in the following manner:

"(1) Combine into one total the respective value of milk, computed pursuant to paragraph (a) of this section, for each handler from whom the market administrator has received at his office, prior to the 11th day after the end of such delivery period, the report for such delivery period and the payments required by Sec. 904.8(b)(3) and (g) and (h) for milk received during each delivery period since the effective date of the most recent amendment hereof;

"(4) Subtract the total amount to be paid to producers pursuant to Sec. 904.8(b)(2);

"(5) Subtract the total of payments required to be made for such delivery period pursuant to Sec. 904.9(h);

"(6) Divide by the total quantity of milk which is included in these computations.

"(7) Subtract not less than 4 cents nor more than 5 cents for the purpose of retaining a cash balance in connection with the payments set forth in Sec. 904.8(b)(3);

"(9) On the 12th day after the end of each delivery period, mail to all handlers and publicly announce (a) such of these computations as do not disclose information confidential pursuant to the act, (b) the blended price per hundredweight which is the result of these computations, (c) the names of the handlers whose milk is included in the computations, and (d) the Class II price."

As of October 28, 1941, Subsection (5) was revoked and the subsections following it were renumbered, and the deduction theretofore required by it was effected by amending Subsection (7) (new Subsection (6)) to read as follows:

"(6) Subtract not less than $5\frac{1}{2}$ cents nor more than $6\frac{1}{2}$ cents for the purpose of retaining a cash balance in connection with the payments set forth in §§ 904.8(b)(3) and 909.9(b);"

See n. 16, *infra*.

Section 904.8 (a) and (b), dealing with the method of making payment, reads:

"SEC. 904.8 PAYMENTS FOR MILK. (a) *Advance payments.* On or before the 10th day after the end of each delivery period, each handler shall make payment to producers for the approximate value of milk received during the first 15 days of such delivery period. In no event shall such advance payment be at a rate less than Class II price for such delivery.

"(b) *Final payments.* On or before the 25th day after the end of each delivery period, each handler shall make payment, subject to the butterfat differential set forth in paragraph (d) of this section, for the total value of milk received during such delivery period as required to be computed pursuant to Sec. 904.7(a), as follows:

"(1) To each producer, except as set forth in subparagraph (2) of this paragraph at not less than the blended price per hundredweight, computed pursuant to Sec. 904.7(b), subject to the differentials set forth in paragraph (e) of this section, for the quantity of milk delivered by such producer;

"(2) To any producer, who did not regularly sell milk for a period of 30 days prior to February 9, 1936, to a handler or to persons within the marketing area, at not less than the Class II price in effect for the plant at which such producer delivered milk, except that during the May, June, and September delivery periods the price pursuant to Sec. 904.4(b)(3) shall apply for all the milk delivered by such producer during the period beginning with the first regular delivery of such producer and continuing until the end of 2 full calendar months following the first day of the next succeeding calendar month; and

"(3) To producers, through the market administrator, by paying to, on or before the 23rd day after the end of each delivery period, or receiving from the market administrator on or before the 25th day after the end of each delivery period, as the case may be, the amount by which the payments required to be made pursuant to subparagraphs (1) and (2) of this paragraph are less than or exceed the value of milk as required to be computed for such handler pursuant to Sec. 904.7(a), as shown in a statement rendered by the market administrator on or before the 20th day after the end of such delivery period."

Other clauses of Section 904.8 deal with price differentials not here pertinent.

Boston area to pay not less than those minima to producers, 7 C. F. R. 1941 Supp., § 904.4, less specified deductions. §§ 904.7(b), 904.8. In addition, the order exercised the authority granted by the statute to require the use of a weighted average in reaching the uniform price to be paid producers, as described in the preceding paragraph. §§ 904.7, 904.8.

Section 904.9 authorizes the payments to cooperatives which are questioned here. Eligibility requirements are set out in § 904.9(a), which then provides:

"(1) Any such cooperative association shall receive an amount computed at not more than the rate of $1\frac{1}{2}$ cents per hundredweight of milk marketed by it on behalf of its members in conformity with the provision of this order, the value of which is determined pursuant to Sec. 904.7(a), and with respect to which a handler has made payments as required by Sec. 904.8(b)(3) and Sec. 904.10: *Provided*, That the amount paid shall not exceed the amount which handlers are obligated to deduct from payments to members under subsection (e) hereof and are not used in paying patronage dividends or other payments to members with respect to milk delivered except in fulfilling the guarantee of payments to producers; and that in cases where two or more associations participate in the marketing of the same milk, payment under this paragraph shall be available only to the association which the individual producer has made his exclusive agent in the marketing of such milk.

"(2) Any such cooperative association shall receive an amount computed at the rate of 5 cents per hundredweight on Class I milk received from producers at a plant operated under the exclusive control of member producers, which is sold to proprietary handlers. This amount shall not be received on milk sold to stores, to handlers, in which the cooperative has any ownership, or to a handler with which the cooperative has such sales arrangements that its milk not sold as Class I milk to such handler is not available for sale as Class I milk to other handlers."

Section 904.9(b) contains the direction for payment out of the cash balance created by § 904.7(b)(6), as amended, *supra*.

Section 904.9:

"(b) PAYMENT TO QUALIFIED COOPERATIVE ASSOCIATIONS. The market administrator shall, upon claim submitted in form as prescribed by him, make payments authorized under paragraph (a), or issue credit therefor out of the cash balance credited pursuant to Sec. 904.7(b)(5), on or before the 25th day after the end of each delivery period, subject to verification of the receipts and other items on which the amount of such payment is based."

The deductions from payments by handlers to cooperative member producers, referred to in Section 904.9(a)(1), quoted *supra*, are authorized by § 904.9(e), as follows:

"(e) *Authorized member deductions.* In the case of producers whose milk is received at a plant not operated by a cooperative association of which such producers are members and which is receiving payments pursuant to this section, each handler shall make such deductions from the payments to be made to such producers pursuant to Sec. 904.8 as may be authorized by such producers and, on or before the 25th day after the end of each delivery period, pay over such deductions to the association in whose favor such authorizations were made."

Section 904.10 requires each handler to pay to the market administrator not more than 2 cents per hundredweight of milk delivered to him in order to meet costs of administration. Section 904.11 covers the effective time, suspension, or termination of the order.

Under the Order, the handler does not make final settlement with the producer until the blended price¹¹ has been set, although he must make a part payment on or before the tenth of each month. § 904.8. But within eight days after the end of each calendar month—the so-called “delivery period”, § 904.1(9)—the handler must report his sales and deliveries, classified by use value, § 904.5, to a “market administrator.” § 904.1(8). On the basis of these reports, the administrator computes the blended price and announces it on the twelfth day following the end of the delivery period. § 904.7(b). On the twenty-fifth day, the handlers are required to pay the balance due of the blended price so fixed to the producers. § 904.8(b).

Were no administrative deductions necessary, the blended price per hundredweight of milk could readily be determined by dividing the total value of the milk used in the marketing area at the minimum prices for each classification by the number of hundredweight of raw milk used in the area.¹² However, the Order requires several adjustments for purposes admittedly authorized by statute, so that the determination of the blended price as actually made is drawn from the total use value less a sum which the administrator is directed to retain to meet various incidental adjustments.¹³ In practice, each handler discharges his obligation to the producers of whom he bought milk by making two payments: one payment, the blended price, is apportioned from the values at the minimum price for the respective classes less administrative deductions and is made to the producer himself;¹⁴ the other payment is equal to these deductions and is made, in the language of the Order, “to the producer, through the market administrator,” in order to enable the administrator to cover the differentials and deductions in question.¹⁵ It is the contention of the petitioners that by § 904.7(b)(6)¹⁶ of the Order the Secretary has directed the administrator to deduct a sum for the pur-

¹¹ “Blended price” means the uniform price less administrative deductions.

¹² Cf. 7 C. F. R. 1941 Supp. § 904.7(a).

¹³ See 7 C. F. R. 1941 Supp. § 904.7(b).

¹⁴ 7 C. F. R. 1941 Supp. §§ 904.7(b), 904.8(b)(1).

¹⁵ 7 C. F. R. 1941 Supp. § 904.8(b)(3). The operations of the settlement fund are described in *United States v. Rock Royal Co-op.*, 307 U. S. 533, 571.

¹⁶ This section has superseded § 904.7(b)(5) in effect at the time this suit was brought with reference to the deduction in issue. 6 F.R. 5482, effective October 28, 1941. See n. 10, *supra*.

pose of meeting payments to cooperatives as required by § 904.9, and that the Act does not authorize the Secretary to include in his order provision for payments of that kind or for deductions to meet them. Apparently, this deduction for payments to cooperatives is the only deduction that is an unrecoverable charge against the producers. The other items deducted under § 904.7(b) are for a revolving fund or to meet differentials in price because of location, seasonal delivery, *et cetera*.

These producer petitioners allege that they have delivered milk to handlers in the "Greater Boston," Massachusetts, marketing area under the provisions of the Order. They state that they are not members of a cooperative association entitled under the Order to the contested payments and that, as producers, many of them voted against the challenged amendment on the producers' referendum under §§ 8c(9) and 8c(19) of the Act. These allegations are admitted by the defense upon which dismissal was based, namely, that the petition fails to state a claim upon which relief could be granted. From the preceding summary of the theory and plan of the statutory regulation of minimum prices for milk affecting interstate commerce, it is clear that these petitioners have exercised the right granted them by the statute and Order to deliver their milk to "Greater Boston" handlers at the guaranteed minimum prices fixed by the Secretary of Agriculture in the Order. Sec. 904.4. Upon accepting that delivery the handler was required by the Order to pay to these producers their minimum prices in the manner set forth in § 904.8. Simply stated, this section required the handler to pay directly to the producer the blended price as determined by the administrator and to pay to the producers through the administrator for use in meeting the deductions authorized by the order of the Secretary and approved by two-thirds of the producers, § 8c(9)(b), the difference between the blended price and the minimum price. The Order directed the administrator to deduct from the funds coming into his hands from the producers' sale price the payments to cooperatives. § 904.9.

It is this deduction which the producers challenge as beyond the Secretary's statutory power. The respondents answer that the petitioners have not such a legal interest in this expenditure or in the administrator's settlement fund as entitles them to challenge the action of the Secretary in directing the disbursement. The

Government says that as the producers pay nothing into the settlement fund and receive nothing from it, they have no legally protected right which gives them standing to sue. There is, of course, no question but that the challenged deduction reduces *pro tanto* the amount actually received by the producers for their milk.

By the statute and Order, the Secretary has required all area handlers dealing in the milk of other producers to pay minimum prices as just described. §§ 904.1(6), 904.4; Act, § 8c(14). The producer is not compelled by the Order to deliver (Act § 8c(13)(B)) but neither can he be required to market elsewhere and if he finds a dealer in the area who will buy his product, the producer by delivery of milk comes within the scope of the Act and the Order. The Order fixing the minimum price obviously affects by direct Governmental action the producer's business relations with handlers. *Columbia System v. United States*, 316 U. S. 407, 422. Cf. *Chicago Junction Case*, 264 U. S. 258, 267. The fact that the producer may sell to the handler for any price above the minimum is not of moment in determining whether or not the statute and Order secure to him a minimum price. Should the producer sell his milk to a handler at prices in excess of the minimum, the handler would nevertheless be compelled to pay into the fund the same amount. The challenged deduction is a burden on every area sale, §§ 904.7(a), 904.8(b). In substance petitioners' allegation is that in effect the Order directed without statutory authority a deduction of a sum to pay the United States a sales tax on milk sold. The statute and Order create a right in the producer to avail himself of the protection of a minimum price afforded by Governmental action. Such a right created by statute is mandatory in character and obviously capable of judicial enforcement.¹⁷ For example the Order could not bar any qualified producers in the milk shed from selling to area handlers. Like the instances just cited from railway labor cases, *supra*, n. 17, the petitioners here voluntarily bring themselves with-

¹⁷ *Texas & N. O. R. Co. v. Brotherhood of R. & S. S. Clerks*, 281 U. S. 548, 568; *Virginian Ry. v. Federation*, 300 U. S. 515, 545. General Committee v. M.-K.-T. R. Co., 320 U. S. 323, and *Switchmen's Union v. Mediation Board*, 320 U. S. 297, do not look in the contrary direction. Both assume claims created by statute in the petitioners and deny a judicial remedy to those claims on the ground that "Congress . . . has foreclosed resort to the courts for enforcement of the claims asserted by the parties." 320 U. S. 300 and 327.

in the coverage of the Act. It cannot be fairly said that because producers may choose not to sell in the area, those who do choose to sell there necessarily must sell, without a right of challenge, in accordance with unlawful requirements of administrators. Upon purchase of his milk by a handler, the statute endows the producer with other rights, *e. g.*, the right to be paid a minimum price. Order, § 904.4.

The mere fact that Governmental action under legislation creates an opportunity to receive a minimum price does not settle the problem of whether or not the particular claim made here is enforceable by the District Court. The deduction for cooperatives may have detrimental effect on the price to producers and that detriment be *damnum absque injuria*.¹⁸ It is only when a complainant possesses something more than a general interest in the proper execution of the laws that he is in a position to secure judicial intervention. His interest must rise to the dignity of an interest personal to him and not possessed by the people generally.¹⁹ Such a claim is of that character which constitutionally permits adjudication by courts under their general powers.²⁰

We deem it clear that on the allegations of the complaint these producers have such a personal claim as justifies judicial consideration. It is much more definite and personal than the right of complainants to judicial consideration of their objections to regulations, which this Court upheld in *Columbia System v. United States*, 316 U. S. 407. In the present case a reexamination of the preceding statement of facts and summary of the statute and Order will show that delivering producers are assured minimum prices for their milk. § 904.4. The Order directs the handler to pay that minimum as follows:

¹⁸ *United States v. Illinois Central R. Co.*, 244 U. S. 82, 87; *United States v. Los Angeles & S. L. R. Co.*, 273 U. S. 299, 314-15; *Alabama Power Co. v. Ickes*, 302 U. S. 464, 478; *Tennessee Power Co. v. T. V. A.*, 306 U. S. 118, 135; *Perkins v. Lukens Steel Co.*, 310 U. S. 113, 125; *Singer & Sons v. Union Pacific R. Co.*, 311 U. S. 295, 303.

¹⁹ This distinction has long been recognized. Chief Justice Marshall phrased it in vivid language as early as *Marbury v. Madison*, 1 Cranch 137, 165-66, a fragment only of which follows: "But where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured, has a right to resort to the laws of his country for a remedy." *Perkins v. Lukens Steel Co.*, 310 U. S. 113, 125; *Massachusetts v. Mellon*, 262 U. S. 447, 488.

²⁰ *Philadelphia Co. v. Stimson*, 223 U. S. 605, 619; *School of Magnetic Healing v. McAnnulty*, 187 U. S. 94, 110.

A. By § 904.8(a) the handler is to make a preliminary part payment of the blended price and later, § 904.8(b)(1) the handler makes the final payment to the producer of the blended price computed as the Order directs. It is clear that the Order compels the handler to pay not only the blended price, which is always less than the uniform minimum price, but the entire minimum price, because § 904.8(b) directs the handler's payment of the entire minimum value as ascertained by § 904.7(a)(1) and (2). The blended price is reached by subtracting among other items the cooperative payment, here in question, from the minimum price. § 904.7(b)(5).

B. The balance of the minimum price, which the handler owes to the producer, he must pay "to the producer, through the market administrator" by payment into the settlement or equalization fund two days ahead of the final date for payment of the blended price. § 904.8(b)(3). This balance of the minimum purchase price is then partly used by the administrator to pay the cooperatives. § 904.9(b). The handler is simply a conduit from the administrator who receives and distributes the minimum prices. The situation would be substantially the same if an administrator received as trustee for the producers the purchase price of their milk, paid expenses incurred in the operation, and paid the balance to the producers. Under such circumstances we think the producers have legal standing to object to illegal provisions of the Order.

However, even where a complainant possesses a claim to executive action beneficial to him, created by federal statute, it does not necessarily follow that actions of administrative officials, deemed by the owner of the right to place unlawful restrictions upon his claim, are cognizable in appropriate federal courts of first instance. When the claims created are against ~~the~~ no remedy through the courts need be provided. *United States v. Babcock*, 250 U. S. 328, 331, and cases cited; *Work v. Rives*, 267 U. S. 175, 181; *Butte, A. & P. Ry. v. United States*, 290 U. S. 427, 142, 143. To reach the dignity of a legal right in the strict sense, it must appear from the nature and character of the legislation that Congress intended to create a statutory privilege protected by judicial remedies. Under the unusual circumstances of the historical development of the Railway Labor Act, this Court has recently held that an administrative agency's determination of a controversy

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between unions of employees as to which the proper bargaining representative of certain employees is not justiciable in federal courts. *General Committee v. M.-K.-T. R. Co.*, 320 U. S. 323. Under the same Act it was held on the same date that the determination by the National Mediation Board of the participants in an election for representatives for collective bargaining likewise was not subject to judicial review. *Switchmen's Union v. Mediation Board*, 320 U. S. 297. This result was reached because of this Court's view that jurisdictional disputes between unions were left by Congress to mediation rather than adjudication. 320 U. S. 302 and 337. That is to say, no personal right of employees, enforceable in the courts, was created in the particular instances under consideration. 320 U. S. 337. But where rights of collective bargaining, created by the same Railway Labor Act, contained definite prohibitions of conduct or were mandatory in form, this Court enforced the rights judicially. 320 U. S. 330, 331. Cf. *Texas & N. O. R. Co. v. Brotherhood of R. & S.S. Clerks*, 281 U. S. 548; *Virginian Ry. v. Federation*, 300 U. S. 515.

It was pointed out in the *Switchmen's* case that:

"If the absence of jurisdiction of the federal courts meant a sacrifice or obliteration of a right which Congress had created, the inference would be strong that Congress intended the statutory provisions governing the general jurisdiction of those courts to control." 320 U. S. at 300.

The only opportunity these petitioners had to complain of the contested deduction was to appear at hearings and to vote for or against the proposed order. Act, § 8c(3), 8c(9) and 8c(19); Order, preamble. So long as the provisions of the Order are within the statutory authority of the Secretary such hearings and balloting furnish adequate opportunity for protest. *Morgan v. United States*, 298 U. S. 468, 480. But where as here the issue is statutory power to make the deduction required by Order, § 904.9, under the authority of § 8c(7)(D) of the Act, a mere hearing or opportunity to vote cannot protect minority producers against unlawful exactions which might be voted upon them by majorities. It can hardly be said that opportunity to be heard on matters within the Secretary's discretion would foreclose an attack on the inclusion in the Order of provisions entirely outside of the Secretary's delegated powers.

Without considering whether or not Congress could create such a definite personal statutory right in an individual against a fund handled by a Federal agency, as we have here, and yet limit its enforceability to administrative determination, despite the existence of federal courts of general jurisdiction established under Article III of the Constitution, the Congressional grant of jurisdiction of this proceeding appears plain. There is no direct judicial review granted by this statute for these proceedings. The authority for a judicial examination of the validity of the Secretary's action is found in the existence of courts and the intent of Congress as deduced from the statutes and precedents as hereinafter considered.

The Act bears on its face the intent to submit many questions arising under its administration to judicial review. §§ 8a(6), 8c(15)(A) and (B). It specifically states that the remedies specifically provided in § 8a are to be in addition to any remedies now existing at law or equity. § 8a(8). This Court has heretofore construed the Act to grant handlers judicial relief in addition to the statutory review specifically provided by § 8c(15). On complaint by the United States, the handler was permitted by way of defense to raise issues of a want of statutory authority to impose provisions on handlers which directly affect such handlers. *United States v. Rock Royal Co-op.*, 307 U. S. 533, 560-61. In the *Rock Royal* case the Government had contended that the handlers had no legal standing in the suit for enforcement to attack provisions of the order relating to handlers. While we upheld the contention of the Government as to the lack of standing of handlers to object to the operation of the producer settlement fund on the ground that the handlers had no "financial interest" in that fund, we recognized the standing of a proprietary handler to question the alleged discrimination shown in favor of the co-operative handlers. The producer settlement fund is created to meet allowable deductions by the payment of a part of the minimum price to producers through the market administrator. See note 15, *supra*. *Rock Royal* pointed out that handlers were without standing to question the use of the fund, because handlers had no financial interest in the fund or its use. It is because every dollar of deduction comes from the producer that he may challenge the use of the fund. The petitioners' complaint is not that their blended price is too low, but that the blended price has been re-

duced by a misapplication of money deducted from the producers' minimum price.

With this recognition by Congress of the applicability of judicial review in this field, it is not to be lightly assumed that the silence of the statute bars from the courts an otherwise justiciable issue, *United States v. Griffin*, 303 U. S. 226, 238; *Shields v. Utah Idaho R. Co.*, 305 U. S. 177, 182; cf. *A. F. of L. v. Labor Board*, 308 U. S. 401, 404, 412. The ruling in *Texas & Pac. Ry. v. Abilene Cotton Oil Co.*, 204 U. S. 426, is not authority to the contrary. It was there held that the statute placed the power in the Interstate Commerce Commission to hear the complaint stated, not in the state court where it was brought. The Commission award was then to be enforced in court. P. 438. Here, there is no forum, other than the ordinary courts, to hear this complaint. When, as we have previously concluded in this opinion, definite personal rights are created by federal statute, similar in kind to those customarily treated in courts of law,²¹ the silence of Congress as to judicial review is, at any rate in the absence of an administrative remedy, not to be construed as a denial of authority to the aggrieved person to seek appropriate relief in the federal courts in the exercise of their general jurisdiction. When Congress passes an Act empowering administrative agencies to carry on governmental activities, the power of those agencies is circumscribed by the authority granted.²² This permits the courts to participate in law enforcement entrusted to administrative bodies only to the extent necessary to protect justiciable individual rights against administrative action fairly beyond the granted powers. The responsibility of determining the limits of statutory grants of authority in such instances is a judicial function entrusted to the courts by Congress by the statutes establishing courts and marking their jurisdiction. Cf. *United States v. Morgan*, 307 U. S. 183, 190-91. This is very far from assuming that the courts are charged more than administrators or legislators with the protection of the rights of the people. Congress and the Executive supervise the

²¹ *Tennessee Power Co. v. T. V. A.*, 306 U. S. 118, 137.

²² *Marbury v. Madison*, 1 Cranch 137, 165; *School of Magnetic Healing v. McAnnulty*, 187 U. S. 94, 109-10; *Interstate Commerce Comm'n v. Union Pacific R. Co.*, 222 U. S. 541, 547; *International Ry. Co. v. Davidson*, 257 U. S. 506, 514; *Morgan v. United States*, 298 U. S. 468, 479; *United States v. Carolina Freight Carriers Corp.*, 315 U. S. 475, 489; *Commissioner v. Gooch Milling & Elevator Co.*, No. 53 this Term, decided December 6, 1943.

acts of administrative agents. The powers of departments, boards and administrative agencies are subject to expansion, contraction or abolition at the will of the legislative and executive branches of the government. These branches have the resources and personnel to examine into the working of the various establishments to determine the necessary changes of function or management. But under Article III, Congress established courts to adjudicate cases and controversies as to claims of infringement of individual rights whether by unlawful action of private persons or by the exertion of unauthorized administrative power.

It is suggested that such a ruling puts the agency at the mercy of objectors, since any provisions of the Order may be attacked as unauthorized by each producer. To this objection there are adequate answers. The terms of the Order are largely matters of administrative discretion as to which there is no justiciable right or are clearly authorized by a valid act. *United States v. Rock Royal Co-op.*, 307 U. S. 533. Technical details of the milk business are left to the Secretary and his aides. The expenses of litigation deter frivolous contentions. If numerous parallel cases are filed, the courts have ample authority to stay useless litigation until the determination of a test case. Cf. *Landis v. North American Co.*, 299 U. S. 248. Should some provisions of an order be held to exceed the statutory power of the Secretary, it is well within the power of a court of equity to so mold a decree as to preserve in the public interest the operation of the portion of the order which is not attacked pending amendment.

It hardly need be added that we have not considered the soundness of the allegations made by the petitioners in their complaint. The trial court is free to consider whether the statutory authority given the Secretary is a valid answer to the petitioners' contention. We merely determine the petitioners have shown a right to a judicial examination of their complaint.

Reversed.

Mr. Justice BLACK is of the view that the judgment should be affirmed for the reasons given in the opinion of the United States Court of Appeals for the District of Columbia.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

Mr. Justice FRANKFURTER, dissenting.

The immediate issue before us is whether these plaintiffs, milk producers, can in the circumstances of this case go to court to complain of an order by the Secretary of Agriculture fixing rates for the distribution of milk within the Greater Boston marketing area. The solution of that question depends, however, upon a proper approach toward such a scheme of legislation as that formulated by Congress in the Agricultural Marketing Agreement Act of 1937.

Apart from legislation touching the revenue, the public domain, national banks and patents, not until the Interstate Commerce Act of 1887 did Congress begin to place economic enterprise under systems of administrative control. These regulatory schemes have varied in the range of control exercised by government; they have varied no less in the procedures by which the control was exercised. More particularly, these regimes of national authority over private enterprise reveal great diversity in the allotment of power by Congress as between courts and administrative agencies. Congress has not made uniform provisions in defining who may go to court, for what grievance, and under what circumstances, in seeking relief from administrative determinations. Quite the contrary. In the successive enactments by which Congress has established administrative agencies as major instruments of regulation, there is the greatest contrariety in the extent to which, and the procedures by which, different measures of control afford judicial review of administrative action.

Except in those rare instances, as in a claim of citizenship in deportation proceedings, when a judicial trial becomes a constitutional requirement because of "The difference of security of judicial over administrative action," *Ng Fung Ho. v. White*, 259 U. S. 276, 285, whether judicial review is available at all, and, if so, who may invoke it, under what circumstances, in what manner, and to what end, are questions that depend for their answer upon the particular enactment under which judicial review is claimed. Recognition of the claim turns on the provisions dealing with judicial review in a particular statute and on the setting of such provisions in that statute as part of a scheme for accomplishing the purposes expressed by that statute. Apart from the text and texture of a particular law in relation to which judicial review is sought, "judicial review" is a mischievous abstraction. There is no such thing as a common law of judicial review in the federal

courts. The procedural provisions in more than a score of these regulatory measures prove that the manner in which Congress has distributed responsibility for the enforcement of its laws between courts and administrative agencies runs a gamut all the way from authorizing a judicial trial *de novo* of a claim determined by the administrative agency to denying all judicial review and making administrative action definitive.

Congress has not only devised different schemes of enforcement for different Acts. It has from time to time modified and restricted the scope of review under the same Act. Compare § 16 of the Act to Regulate Commerce, February 4, 1887, c. 104, 24 Stat. 379, 384-385, with § 13 of the Commerce Court Act, June 18, 1910, c. 309, 36 Stat. 539, 554-5, and 49 U. S. C. § 16(12), and the latter with enforcement of reparation orders, 49 U. S. C. § 16(2). Moreover the same statute, as is true of the Interstate Commerce Act, may make some orders not judicially reviewable for any purpose, see, *e. g.*, *United States v. Los Angeles R. R.*, 273 U. S. 299, or reviewable by some who are adversely affected and not by others, *e. g.*, *Singer & Sons v. Union Pacific Co.*, 311 U. S. 295, 305-308. The oldest scheme of administrative control—our customs revenue legislation—shows in its evolution all sorts of permutations and combinations in using available administrative and judicial remedies. See, for instance, *Elliott v. Swartwout*, 10 Pet. 137; *Cary v. Curtis*, 3 How. 236; *Murray's Lessee et al. v. Hoboken Land and Improvement Co.*, 13 How. 272; *Hilton v. Merritt*, 110 U. S. 97; for a general survey, see Freund, *Administrative Powers over Persons and Property*, §§ 260-62. And only the other day we found the implications of the Railway Labor Act (c. 347, 44 Stat. (part 2) 577, as amended, c. 691, 48 Stat. 1185, 45 U. S. C. § 151 *et seq.*) to be such that courts could not even exercise the function of keeping the National Mediation Board within its statutory authority. *Switchmen's Union v. Board*, 320 U. S. 297. Were this list of illustrations extended and the various regulatory schemes thrown into a hotchpot, the result would be hopeless discord. And to do so would be to treat these legislative schemes as though they were part of a single body of law instead of each being a self-contained scheme.

The divers roles played by judicial review in the administration of regulatory measures other than the Agricultural Marketing Act cannot tell us when and for whom judicial review of administrative action can be had under that Act. The fact that certain

classes of individuals adversely affected by a ruling of the Interstate Commerce Commission can, and other classes cannot obtain redress in court, does not tell us what classes may and what classes may not obtain judicial redress for action by the Secretary of Agriculture which affects these respective classes adversely. And to cite the *Switchmen's* case, *supra*, in support of this case is to treat our decisions too lightly. In the numerous cases either granting or denying judicial review, grant or denial were reached not by applying some "natural law" of judicial review nor on the basis of some general body of doctrines for construing the diverse provisions of the great variety of federal regulatory statutes. Judicial review when recognized—its scope and its incidence—was derived from the materials furnished by the particular statute in regard to which the opportunity for judicial review was asserted. This is the lesson to be drawn from the prior decisions of this Court on judicial review, and not any doctrinaire notions of general applicability to statutes based on different schemes of administration and conveying different purposes by Congress in the utilization of administrative and judicial remedies for the enforcement of law. However useful judicial review may be, it is for Congress and not for this Court to decide when it may be used—except when the Constitution commands it. In this case there is no such command. Common-law remedies withheld by Congress and unrelated to a new scheme for enforcing new rights and duties should not be engrafted upon remedies which Congress saw fit to particularize. To do so impliedly denies to Congress the constitutional right of choice in the selection of remedies, and turns common-law remedies into constitutional necessities simply because they are old and familiar.

When recently the Agricultural Marketing Act was in litigation before us, we sustained its constitutionality and defined its scope in the light of its history, its purposes and its provisions. *United States v. Rock Royal Co-op.*, 307 U. S. 533. We held in that case that a milk handler cannot challenge in court such an order as the one which is now assailed. Again we must turn to the history, the purposes and the provisions of the Act to determine whether Congress gave the producer the right of judicial relief here sought.

In 1931 and 1932, prices of manufactured dairy products reached the lowest level in twenty-five years. Because of their relatively weak bargaining position, milk producers suffered most seriously. See Mortenson, *Milk Distribution as a Public Utility*, p. 6; Black,

The Dairy Industry and the AAA, c. III; *State Milk and Dairy Legislation*. (U. S. Gov't Printing Office, 1941) p. 3. Accordingly, Congress decided that the public interest in the handling of milk in interstate commerce could no longer be left to the haggling of a disorderly market, mitigated by inadequate organization within the industry. The Agricultural Adjustment Act of 1933 (c. 25, 48 Stat. 31) was the result. The "essential purpose" of the series of enactments thus initiated was to raise the producer's prices. Sen. Rep. No. 1011, 74th Cong., 3d Sess., p. 3. The Act of 1933 was amended in 1935 (c. 641, 49 Stat. 750), and partially re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, with which we are here concerned. c. 296, 50 Stat. 246, c. 567, 50 Stat. 563, 7 U. S. C. § 601 *et seq.*

An elaborate enactment like this, devised by those who know the needs of the industry and drafted by legislative specialists, is to be treated as an organism. Every part must be related to the scheme as a whole. The legislation is a self-contained code, and within it must be found whatever remedies Congress saw fit to afford. For the Act did not give new remedies for old rights. It created new rights and new duties, and precisely defined the remedies for the enforcement of duties and the vindication of rights. Of course the statute concerns the interests of producers, handlers and consumers. But it does not define or create any legal interest for the consumer, and it specifically provides that "No order issued under this title shall be applicable to any producer in his capacity as producer." § 8c(13) (B).

The statute as an entirety makes it clear that obligations are imposed on handlers alone. Section 8c(5)(A) authorizes the Secretary to classify milk according to the form in which or the purpose for which it is used. Section 8c(5)(B)(ii) directs the Secretary to provide for the payment to producers of a uniform price "irrespective of the uses made of such milk by the individual handler to whom it is delivered". This latter, known as the "blended price", is computed under the Secretary's Order No. 4 of July 28, 1941, by multiplying the use value of the milk by the total quantity, making specified deductions and additions, and then dividing the resulting sum by the total quantity of the milk. § 904.7(b). A deduction for payments to cooperatives which enters into this computation is the object of petitioners' attack.

It is apparent that the minimum "blended price" which the producer receives may be different than the minimum "use value"

fixed by the Secretary or his Administrator which the handler must pay. Thus § 8c(5)(C) authorizes provision for necessary adjustments. The mechanics of these adjustments are described in the Secretary's Order No. 4. In short, the handler who sells or uses his milk so that its value is more than the minimum "blended price" he pays the producer, must pay the excess to a settlement fund, and the handler who puts his milk to a lower value use than the minimum "blended price" he pays in turn receives the difference out of the fund. § 904.8(b).

Violation of any order by a handler makes him subject to criminal proceedings. § 8c(14). Thus, while the Act and the Order may affect the interests of producers as well as those of handlers, legally they operate directly against handlers only. The corrective processes provided by the Act reflect this situation. Section 8c(15) permits a handler to challenge an order before the Secretary, and if dissatisfied, he may bring suit in equity before a district court. Provision for judicial remedies for consumers and producers is significantly absent. Such omission is neither inadvertent nor surprising. It would be manifestly incongruous for an Act which specifically provides that no order shall be directed at producers to give to producers the right to attack the validity of such an order in court.

To create a judicial remedy for producers when the statute gave none is to dislocate the Congressional scheme of enforcement. For example, § 8c(15)(B) provides that the pendency of a proceeding for review instituted by a handler shall not impede or delay proceedings brought under § 8a(6) for compliance with an order. Because there is no provision for court review of an order on a producer's position naturally there is no corresponding provision to guard against such interference with enforcement of an order. By giving producers the right to sue although Congress withheld that right, the suspension of a milk order pending disposition of a producer's suit will now depend upon the discretion of trial judges. And technical details concerning the milk industry that were committed to the Secretary of Agriculture are now made subjects of litigation before ill-equipped courts.

By denying them access to the courts Congress has not left producers to the mercy of the Secretary of Agriculture. Congress merely has devised means other than judicial for the effective expression of producers' interests in the terms of an order. Before the Secretary may issue an order he is required to "give due

notice of and an opportunity for a hearing upon a proposed order." § 8c(3). At such a hearing all interested persons may submit relevant evidence, and the procedure makes adequate provision for notice to those who may be affected by an order. See *Administrative Procedure and Practice in the Department of Agriculture under the Agricultural Marketing Agreement Act of 1937* (U. S. Department of Agriculture, 1939) p. 11 *et seq.* Nor are these the only or the most effective means for safeguarding the producer's interest. While an order may be issued despite the objection of handlers of more than 50% of the volume of the commodity covered by the order, no order may issue when not approved by at least two-thirds—either numerically or according to volume of production—of the producers. § 8c(9).

The fact that Congress made specific provision for submission of some defined questions to judicial review would hardly appear to be an argument for inferring that judicial review even of broader scope is also open as to other questions for which Congress did not provide judicial review. The obvious conclusion called for is that as to such other questions, judicial review was purposefully withheld. In the frame of this statute such an omission should not be treated as having no meaning, or rather as meaning that an omission is to be given the same effect as an inclusion. Nor does § 8a(8) referring to remedies "existing at law or in equity" touch our problem. That only adds to the remedies in § 8a(5)-(7) for the enforcement of the Act. It in no way qualifies or expands the express provisions of the Statute in § 8c(15) for judicial review of such an order as the present—specification of the class of persons who are given the right to resort to courts and narrow limitation of the scope of judicial review. The remedy of review here sought by producers is by § 8c(15) explicitly restricted to handlers; and such review is not like that before the Court, a conventional suit in equity, but is a procedure for review of an adverse ruling in a price proceeding before the Secretary of Agriculture. It is a review of an administrative review, not an independent judicial determination.

An elaborate process of implications should not be invented to escape the plain meaning of § 8c(15), and to dislocate a carefully formulated scheme of enforcement. That is not the way to construe such legislation, that is, if Chief Justice Taft was right in characterizing as "a conspicuous instance of his [Chief Justice White's] unusual and remarkable power and facility in statesmanlike interpretation of statute law", 257 U. S. xxv, the doctrine established

in *Texas & Pac. Ry. v. Abilene Cotton Oil Co.*, 204 U. S. 426, and more particularly the way in which § 22 of the Act to Regulate Commerce was therein construed to effectuate the purposes of that Act. 204 U. S. at 446-447.

The Court is thus adding to what Congress has written a provision for judicial relief of producers. And it sanctions such relief in a case in which petitioners have no standing to sue on any theory. The only effect of the deduction which is challenged by the producers is to fix a minimum price to which they are entitled perhaps lower than that which might otherwise have been determined. But the Act does not prevent their bargaining for a price higher than the minimum, and we are advised by the Government of what is not denied by petitioners, that such arrangements are by no means unusual. This Court has held that a consumer has no standing to challenge a minimum price order like the one before us. *City of Atlanta v. Ickes*, 308 U. S. 517; cf. *Sprunt & Son v. United States*, 281 U. S. 249. Surely a producer who may bargain for prices above the minimum is in no better legal position than a consumer who urges that too high a minimum has been improperly fixed. The Commonwealth of Massachusetts which purchased milk for its public institutions valued at \$105,232.97 in 1940, and \$117,584.50 in 1941, has hardly a less substantial interest in the minimum price than that of the petitioners. And yet Massachusetts has no standing to object to the minimum fixed by an order.

The alleged lower minimum "blended price" is the sum and substance of petitioners' complaint. If that gives them no standing to sue nothing does. An attack merely on the method by which the blended price was reduced may present an interesting abstract question but furnishes no legal right to sue. The producers have nothing to do with the settlement fund. They receive the blended price in any event. Even assuming that the Administrator may have fixed a blended price in ways that may argue an inconsistency between what he has done and what Congress told him to do, any resulting disadvantage to a producer is wholly unrelated to the settlement fund. That fund is contributed by handlers and paid by handlers. If handlers may not attack payments to cooperatives, as this Court held in *United States v. Rock Royal Co-op.*, *supra* at 561, with all deference I am unable to see how producers can be in a better position to attack such payments. This suit was rightly dismissed.